

AMENDED AND RESTATED  
DISTRICTWIDE  
GROUND WATER MANAGEMENT AREA  
RULES AND REGULATIONS

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## TABLE OF CONTENTS

| <b><u>Rule</u></b>                                                                                                        | <b><u>Page</u></b> |
|---------------------------------------------------------------------------------------------------------------------------|--------------------|
| 1. AUTHORITY                                                                                                              | 4                  |
| 2. PURPOSE                                                                                                                | 4                  |
| 3. APPLICABILITY                                                                                                          | 4                  |
| 4. DEFINITIONS                                                                                                            | 4                  |
| 5. GENERAL PROVISIONS AND PROCEDURES FOR ENFORCEMENT                                                                      | 13                 |
| 5.1 Enforcement                                                                                                           | 13                 |
| 5.2 Inspections                                                                                                           | 14                 |
| 5.3 Submission of Inspection Report Alleging Violation and Alleged Violator’s Alternatives                                | 14                 |
| 5.4 Schedule of Compliance                                                                                                | 15                 |
| 5.5 Voluntary Compliance                                                                                                  | 15                 |
| 5.6 Hearing                                                                                                               | 15                 |
| 5.7 Action of the Alleged Violator Following Issuance of a Formal Notice of Alleged Violation or a Cease and Desist Order | 15                 |
| 5.8 Board Authorization to Initiate Court Action                                                                          | 16                 |
| 5.9 Cease and Desist Order; Violation; Penalty                                                                            | 16                 |
| 6. GROUND WATER QUANTITY CONTROLS                                                                                         | 16                 |
| 6.1 Moratorium on Well Construction Permits and on New or Expanded Uses                                                   | 16                 |
| 6.2 Permit to Construct a Water Well                                                                                      | 16                 |
| 6.3 Large User Permit                                                                                                     | 16                 |
| 6.4 Certified Irrigated Uses                                                                                              | 19                 |
| 6.5 Flow Meters                                                                                                           | 19                 |
| 6.6 Allocation System for Agricultural Uses                                                                               | 22                 |
| 6.7 Transfers                                                                                                             | 23                 |
| 6.8 Pooling                                                                                                               | 33                 |
| 6.9 Improper Irrigation Runoff                                                                                            | 34                 |
| 7. GROUND WATER QUALITY CONTROLS                                                                                          | 35                 |
| 7.1 Ground Water Quality Management Subareas                                                                              | 35                 |
| 7.2 Phase I Controls                                                                                                      | 35                 |
| 7.3 Phase II Controls                                                                                                     | 36                 |
| 7.4 Phase III Controls                                                                                                    | 37                 |
| 7.5 Identifying and Establishing Ground Water Quality Management Subareas                                                 | 38                 |
| 7.6 Implementation Time Frame for Establishing a Ground Water Quality Management Subarea                                  | 38                 |
| 7.7 Transition Period Between Management Phase Levels and Termination Process                                             | 38                 |
| 7.8 Wellhead Protection                                                                                                   | 39                 |
| 7.9 Chemigation                                                                                                           | 40                 |
| 8. VARIANCES                                                                                                              | 45                 |

APPENDICES

Page

|    |                                                                                                                                          |    |
|----|------------------------------------------------------------------------------------------------------------------------------------------|----|
| A. | SOUTH PLATTE NATURAL RESOURCES DISTRICT: DISTRICTWIDE GROUND WATER MANAGEMENT AREA DESIGNATION AND DELINEATION; AND STRATIGRAPHIC EXTENT | 47 |
| B. | REVISED SOUTH PLATTE NATURAL RESOURCES DISTRICT DISTRICTWIDE GROUND WATER MANAGEMENT AREA MAP                                            | 48 |
| C. | SOUTH PLATTE NATURAL RESOURCES DISTRICT ALLOCATION SUBAREAS & ALLOCATIONS (Acre-Inches) FOR THE 2022 THROUGH 2024 ALLOCATION PERIOD      | 49 |
| D. | SOUTH PLATTE NATURAL RESOURCES DISTRICT - GROUND WATER QUALITY MANAGEMENT SUBAREAS DELINEATION MAP                                       | 50 |

**SOUTH PLATTE NATURAL RESOURCES DISTRICT  
DISTRICTWIDE GROUND WATER MANAGEMENT AREA  
RULES AND REGULATIONS**

**1. AUTHORITY**

These rules and regulations are adopted pursuant to the authority granted in *Neb. Rev. Stat.* §§ 46-701 to 46-754, the Nebraska Ground Water Management and Protection Act (*the "Act"*), and the Nebraska Chemigation Act, *Neb. Rev. Stat.* §§ 46-1101 through 46-1148 (*the "Chemigation Act"*).

**2. PURPOSE**

The purpose of these rules and regulations, among others, is to implement the South Platte Natural Resources District's Ground Water Management Plan (the "Plan"). The Act provides authority for the Plan and these rules and regulations. The goal of the Plan is to facilitate the proper management of Ground Water for quality, quantity, and integrated management.

**3. APPLICABILITY**

These rules and regulations apply to all lands within the District, and such rules and regulations have been designated as the Districtwide Ground Water Management Area. A description of the lands subject to these rules and regulations and the map showing the location of such lands are set forth in Appendix A and Appendix B, respectively. The Controls adopted pursuant to the authority granted in the Act and the Chemigation Act are set forth in Rules 6 and 7 of these rules and regulations.

**4. DEFINITIONS**

4.1 Acre-Inch - shall mean the amount of water necessary to cover an acre of land one inch deep.

4.2 Act - shall mean the Nebraska Ground Water Management and Protection Act, *Neb. Rev. Stat.* §§ 46-701 to 46-754.

4.3 Agricultural Use - shall mean irrigation and/or aquaculture use.

4.4 Alleged Violator - shall mean the Ground Water User, Landowner, or Operator of the land who allegedly has failed to comply with any provision of the Act, the Chemigation Act or these rules and regulations.

4.5 Allocation - as it relates to water use for irrigation purposes, shall mean the allotment of a specified total number of Acre-Inches of irrigation water per Certified Irrigated Acre for the Allocation Period determined by the Board.

4.6 Allocation Period - shall mean any three (3) year period during which an Allocation may be used in Allocation Subareas A, B, C, D, E and F.

4.7 Allocation Subareas - shall mean any geographic or stratigraphic subareas identified in Rule 6.6 and as shown on the maps in Appendix C, as determined by the Board pursuant to *Neb. Rev. Stat.* § 46-739(4).

4.8 Application for a Large User Permit - shall mean an application on a form supplied by the District for any Industrial or Commercial Water User, public water supplier, Non-Transient Non-Community or Transient Non-Community Public Water Supplier, who desires to withdraw and/or consumptively use Ground Water in amounts in excess of twenty-five (25) million gallons annually.

- 4.9 Application for a Late Permit - shall mean an application on a form supplied by the District for a well construction permit that was not timely filed. Such permit shall be reviewed by the District in accordance with *Neb. Rev. Stat. § 46-736*.
- 4.10 Application for a Transfer Permit - shall mean an application on a form supplied by the District for the physical Transfer of Ground Water, the change in type of use of Ground Water, the addition of a type of use of Ground Water to the well, the Transfer of Certified Irrigated Acres, or the Transfer of an Allocation.
- 4.11 Application for a Well Construction Permit - shall mean an application on a form supplied by the District for the construction of a Water Well in accordance with *Neb. Rev. Stat. §§ 46-735 through 46-738*.
- 4.12 Applicator - shall mean any person engaged in the application of chemicals by means of Chemigation. Applicator shall include any Person operating equipment used for Chemigation whether for themselves or on behalf of the Chemigation Permitholder for the land on which the Chemigation will take place.
- 4.13 Aquaculture - shall mean the agricultural practice of controlled propagation and cultivation of aquatic plants or animals for commercial purposes as set forth in *Neb. Rev. Stat. § 2-3804.01*.
- 4.14 Assessment Program - shall mean a program established by the District which assesses water quality conditions, whether conditions are improving or degrading over time, and how natural features and human activities affect those conditions.
- 4.15 Best Management Practices - shall mean the schedule of activities, maintenance procedures, and other management practices utilized for purposes of irrigation efficiency, to conserve or effect a savings of Ground Water, or to prevent or reduce present and future contamination of Ground Water. Best Management Practices relating to contamination of Ground Water may include, but not be limited to, irrigation scheduling, proper rate and timing of fertilizer application, and other fertilizer and pesticide management programs. In determining the rate of fertilizer application, the District shall consult with the University of Nebraska or a crop advisor certified by the American Society of Agronomy.
- 4.16 Biosolids - shall mean sewage sludge that is used or disposed of through land application, surface disbursal, incineration, or disposal in a municipal solid waste landfill.
- 4.17 Board or Board of Directors - shall mean the Board of Directors of the South Platte Natural Resources District.
- 4.18 Carryforward - shall mean any unused portion of an Allocation, which may, in accordance with these rules and regulations, be carried forward to subsequent Allocation Periods.
- 4.19 Carryforward Cap - shall mean the total amount of Carryforward that may be accumulated over multiple Allocation Periods and used in subsequent Allocation Periods.
- 4.20 Cease and Desist Order - shall mean an order issued by the District pursuant to the authority granted under the Act or these rules and regulations, following three (3) days' notice to the person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the Act or of orders or permits issued pursuant to the Act and these rules and regulations, and to restrain the construction of illegal wells or the withdrawal or use of water from illegal wells.
- 4.21 Certified Irrigated Acre - shall mean any acre of land within a Certified Irrigated Tract with a demonstrable or proven history of irrigation, as provided in these rules and regulations.
- 4.22 Certified Irrigated Tract - shall mean a specific area(s) of land that contains Certified Irrigated Acres in connection with a particular water source(s) that are physically connected.

- 4.23 Certified Water Use - shall mean any beneficial use of Ground Water for purposes other than irrigation identified by the District pursuant to rules adopted by the District.
- 4.24 Chemical - shall mean any Fertilizer, fungicide, herbicide, or Pesticide.
- 4.25 Chemigation - shall mean any process whereby Chemicals are applied to land or crops in or with water through an on farm Irrigation Distribution System.
- 4.26 Chemigation Act - shall mean the Nebraska Chemigation Act, *Neb. Rev. Stat.* §§ 46-1101 through 46-1148.
- 4.27 Chemigation Permitholder - shall mean the Landowner or Operator of land who applies or authorizes the application of Chemicals to such land by means of Chemigation. The permitholder shall be the party primarily responsible for any liability arising from Chemigation on the property.
- 4.28 Community Water System - shall mean a public water system that 1) serves at least fifteen (15) service connections used by year-round residents of the area served by the system or 2) regularly serves at least twenty-five (25) year-round residents.
- 4.29 Compliance Inspector - shall mean an employee or agent of the District authorized by the District Manager to perform the functions assigned to him or her by these rules and regulations.
- 4.30 Consumptive Use - shall mean the amount of water that is consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use is lawfully made (e.g. that portion of the irrigation water applied to a crop that is lost to the system due to evapotranspiration).
- 4.31 Controls - shall mean any requirement, obligation, duty, or restriction imposed on any Ground Water User, who owns, uses or controls land within the District. Controls are set forth in Rule 6 and Rule 7 of these rules and regulations.
- 4.32 Council - shall mean the Environmental Quality Council.
- 4.33 Cropping System - shall mean the crop production activity of a farm, which comprises all means of raising a crop and the interaction of a crop with farm resources, other household enterprises, and the physical, biological, technological and sociological factors or environments used or employed to raise a crop.
- 4.34 Decommission - when used in relation to a Water Well, shall mean the act of filling, sealing, and plugging a Water Well in accordance with the Department of Health and Human Services Regulation and Licensure rules and regulations.
- 4.35 Department or NDNR - shall mean the Nebraska Department of Natural Resources.
- 4.36 Detection Program - shall mean the process of collecting representative samples of water from the natural environment, an industrial site, or any other source, for the purpose of analyzing it for contaminants or constituents.
- 4.37 Director - shall mean the Director of NDEE.
- 4.38 District, SPNRD or NRD - shall mean South Platte Natural Resources District, which encompasses the entire area located in Cheyenne, Deuel and Kimball counties in the State of Nebraska.
- 4.39 Educational Programs - shall mean information and educational training programs designed to educate a Landowner and/or Operator of land with Best Management Practices in the operation of irrigation and Cropping Systems.

- 4.40 Emergency Use of Water - shall mean any set of circumstances that requires the use of water from any source that might otherwise be regulated or prohibited and the agency, District, or organization responsible for regulating water use from such source reasonably and in good faith believes that such emergency use is necessary to protect the public health, safety, and welfare, including, if applicable, the compliance with federal or state water quality standards.
- 4.41 Fertilizer - shall mean any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication.
- 4.42 First Class City - shall mean all cities in the state having more than five thousand and not more than one hundred thousand inhabitants (i.e. 5,001- 100,000).
- 4.43 Floating Township - shall mean a set of thirty-six (36) sections lying in a contiguous block, such that the area is six (6) sections east to west and six (6) sections north to south.
- 4.44 Flow Meter - shall mean a device of a type or design approved by the Board, and when properly installed and calibrated, will be operated and maintained in accordance with District specifications, and will measure the total amount of Ground Water withdrawn from a Water Well.
- 4.45 Fluid - shall mean material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.
- 4.46 Good Cause Shown - shall mean a reasonable justification for granting a Variance for a Consumptive Use of water that would otherwise be prohibited by rule or regulation and which the District reasonably and in good faith believes will provide an economic, environmental, social, or public health and safety benefit that is equal to or greater than the benefit resulting from the rule or regulation from which a Variance is sought.
- 4.47 Ground Water - shall mean that water which occurs in or moves, seeps, filters, or percolates through the ground under the surface of the land.
- 4.48 Ground Water Management Area, Districtwide Ground Water Management Area or Management Area - shall mean any geographic and stratigraphic area designated by the Board pursuant to *Neb. Rev. Stat. § 46-712* to protect Ground Water quantity or quality. The entire District is designated as a Ground Water Management Area.
- 4.49 Ground Water Management Plan - shall mean a Ground Water Management Plan developed by the Board and submitted to the Director of the Nebraska Department of Natural Resources for review pursuant to *Neb. Rev. Stat. §§ 46-709 through 46-711*.
- 4.50 Ground Water Quality Management Subarea or Quality Management Subarea - shall mean any geographic and stratigraphic subarea designated by the Board pursuant to *Neb. Rev. Stat. § 46-739(4)* to protect Ground Water quality.
- 4.51 Ground Water User - shall mean any Person who pumps, extracts, withdraws, or confines Ground Water for any use, except for domestic or Range Livestock, regardless of rate of withdrawal. Whenever the Landowner and Operator are different Persons or entities, the term Ground Water User shall include both the Landowner and Operator.
- 4.52 Historic Consumptive Use - shall mean the amount of water that has previously been consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use was lawfully made.
- 4.53 Injection Location - shall mean each site where Chemical(s) will be applied through an Irrigation

Distribution System.

4.54 Injection Well - shall mean a “Water Well” into which “Fluids” are injected.

4.55 Irrigated Acre - shall mean any acre of land that is certified as such pursuant to these rules and regulations and that is receiving Ground Water through irrigation works, mechanisms, or facilities in any given Water Year.

4.56 Irrigation Distribution System - shall mean any device or combination of devices having a hose, pipe, or other conduit, which connects directly to any source of ground or surface water, through which water or a mixture of water and Chemicals is drawn and applied for agricultural or horticultural purposes. The Irrigation Distribution System shall not include any hand-held hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

4.57 Irrigation System - shall mean the necessary appurtenance connected to any Water Well to convey irrigation water to any Certified Irrigated Tract. This includes, but is not limited to, the pump and any combination of set-move, solid-set, traveler, center pivot, or linear move sprinkler system(s), subsurface drip system, and gravity, furrow, and border or flood irrigation utilizing water from a ditch, canal, reuse pit, Ground Water excavation pit, or pipe.

4.58 Land where Ground Water is Withdrawn and Overlying Land - the term “Overlying Land” shall have the same meaning as “land where the Ground Water is withdrawn” and shall mean, for the purposes of Rule 6.7, the tract of land where the well withdrawing the Ground Water is or will be located and any other tract of land that 1) is owned or controlled by the same Person or Persons as the tract of land where such well is or will be located, 2) is not completely separated from such tract of land by land owned by any other Person, and 3) is located in the same government surveyed section as such well is located or will be located in or in a government surveyed section adjacent to the section where such well is or will be located.

4.59 Landowner - shall mean any Person who owns real estate or has contracted to purchase or otherwise acquire title to real estate.

4.60 Livestock Operation - shall mean 1) livestock kept in buildings, lots or pens, which normally are not used for the growing of crops or vegetation, or 2) any livestock kept in any Livestock Operation that is required by the Livestock Waste Management Act or state livestock waste regulations to obtain a permit from the Department of Environment and Energy , or 3) livestock which are confined for more than ninety (90) days per year. Livestock Operation shall not mean livestock that are kept in pastures, on rangeland, or on other grazing lands and allowed to feed on vegetation growing therein.

4.61 Manure - shall mean solid animal excrement used as a fertilizer.

4.62 Maximum Contaminant Level (MCL) - shall mean standards that are set by the United States Environmental Protection Agency (EPA) for drinking water quality as set forth in Title 40 of the Code of Federal Regulations.

4.63 Municipality - shall mean a local subdivision of state government, which encompasses a defined territory and population, such as a city, town, or village.

4.64 Non-Community Water System - shall mean a Public Water System that is not a community water system. A Non-Community Water System is either a “Transient Non-Community Water System” or a “Non-Transient Non-Community Water System.”

4.65 NDEE - shall mean the Nebraska Department of Environment and Energy.

4.66 Non-Transient, Non-Community Water System - shall mean a Public Water System that is not a community water system and that regularly serves at least twenty-five (25) of the same individuals over six (6) months per year (e.g. schools, colleges and hospitals).



4.67 Notice - shall mean written notice provided from the District to an Alleged Violator of the Ground Water Management and Protection Act or these rules and regulations.

4.68 Offset - shall mean any water used or required to be used to replace Ground Water withdrawn or consumptively used for any new or expanded purpose, from the effective date of these rules and regulations.

4.69 Open Discharge System - shall mean a system in which the water is pumped or diverted directly into a ditch or canal in such a manner that the force of gravity at the point of discharge into the ditch or canal cannot cause water to flow back to the point from which the water was pumped.

4.70 Operator - shall mean any Person who has control over the day-to-day operations of the land in question, which shall include any Landowner and/or any tenant.

4.71 Permit - shall mean the written approval of the District pursuant to the authority granted in the Act, the Chemigation Act or these rules and regulations.

4.72 Person - shall mean any natural Person, partnership, limited liability company, association, corporation, Municipality, irrigation district, agency or political subdivision of the state, or a department, an agency of the state, or agency or bureau of the United States.

4.73 Pesticide - shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed, or other form of plant or animal life or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

4.74 Phase I Subarea - shall mean a subarea within the District in which levels of nitrate-nitrogen contamination, or any contaminant harmful to the health or the environment exceed 65% of the MCL and is 80% or less than the MCL established pursuant to these rules and regulations, which is consistent with standards published by the U.S. Environmental Protection Agency.

4.75 Phase II Subarea - shall mean a subarea within the District in which levels of nitrate-nitrogen contamination, or any contamination harmful to the health or the environment exceed 80% of the MCL and is 95% or less than the MCL established pursuant to these rules and regulations, which is consistent with standards published by the U.S. Environmental Protection Agency.

4.76 Phase III Subarea - shall mean a subarea within the District in which levels of nitrate-nitrogen contamination, or any contamination harmful to the health or the environment exceed 95% of the MCL established pursuant to these rules and regulations, which is consistent with standards published by the U.S. Environmental Protection Agency.

4.77 Pooling Arrangement - shall mean any arrangement approved by the Board, which involves the joint operation of two (2) or more Certified Irrigated Tracts.

4.78 Public Water System - shall mean any system which provides the public with water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days per year. Public Water System shall include 1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system and 2) any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system. Public water system does not include a special irrigation district. A public water system is either a community water system or a non-community water system.

Service connection does not include a connection to a system that delivers water by a constructed conveyance

other than a pipe if 1) the water is used exclusively for purposes other than residential uses, consisting of drinking, bathing, cooking, and other similar uses, 2) the Department of Health determines that alternative water to achieve the equivalent level of public health protection provided by the Nebraska Safe Drinking Water Act (Act) and rules and regulations under the Act is provided for residential or similar uses for drinking and cooking, or 3) the Department of Health determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the Act and the rules and regulations under the Act.

4.79 Range Livestock - shall mean livestock that are kept in pastures, on rangeland, or on other grazing lands and allowed to feed on vegetation growing therein. Range Livestock shall not mean 1) livestock kept in buildings, lots or pens, which normally are not used for the growing of crops or vegetation, or 2) any livestock kept in any Livestock Operation that is required by the Livestock Waste Management Act or state livestock waste regulations to obtain a permit from the Department of Environment and Energy. Livestock, which are confined for fewer than ninety (90) calendar days per year, may be considered Range Livestock if they meet the other conditions in this definition.

4.80 Restricted Use Pesticide - shall mean a pesticide classified as a restricted-use pesticide by the United States Environmental Protection Agency, a state-limited pesticide, or any pesticide for which an exemption under section 136p of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136, et seq., has been granted.

4.81 Second Class City - shall mean all cities, towns, and Villages in the state containing more than eight hundred and not more than five thousand inhabitants (i.e. 801 - 5,000).

4.82 Septage - shall mean the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

4.83 Sewage Sludge - shall mean any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumping, type III marine sanitation device pumping, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

4.84 Sprinkler - shall mean any irrigation system that uses pressure energy to form and distribute water droplets over the land surface. This includes permanent, semi-permanent, or moveable sprinkler systems such as set-move, solid-set, traveler, center pivot, and linear move sprinkler systems.

4.85 Temporary Deferment - shall mean a District program that allows a Ground Water User of an Irrigation or Industrial/Commercial Water Well(s) to defer the installation of a Flow Meter due to discontinued use of such well for a period of time.

4.86 Test Hole - shall mean a hole designed solely for obtaining information on hydrologic or geologic conditions.

4.87 Total Allocation - shall mean the current allocation and any allowable or authorized Carryforward from prior Allocation Periods.

4.88 Training Certification - shall mean a current certificate issued by the District to any Operator within a specified Quality Management Subarea who has completed any Educational Program authorized by the District.

4.89 Transfer - shall mean the written approval by the Board of a Permit for the physical transfer of Ground Water, the change in type of use of Ground Water, the addition of a type of use of Ground Water to any well, the Transfer of Certified Acres, or the Transfer of an Allocation.

4.90 Transient Non-Community Water System - shall mean a non-community water system that does not regularly serve at least twenty-five (25) of the same Persons over six (6) months per year (e.g. rest stops, parks, convenience stores and restaurants with their own water supplies).

4.91 Variance - shall mean the written approval by the District of any act, which is contrary to existing rules or regulations of the District.

4.92 Village - shall mean any village or town in the state containing not less than one hundred (100) nor more than eight hundred (800) inhabitants.

4.93 Water Well - shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for Ground Water, monitoring Ground Water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in *Neb. Rev. Stat.* § 81-1502 into the underground water reservoir. Water Well includes any excavation made for any purpose if Ground Water flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation. For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation. Water Well does not include 1) any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to re-pressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission or 2) any structure requiring a permit by the Department used to exercise a surface water appropriation.

4.94 Other Types of Water Wells:

4.94.1 Abandoned Water Well - shall mean any Water Well 1) the use of which has been accomplished or permanently discontinued, 2) which has been decommissioned as described in the rules and regulations of the Department of Health and Human Services Regulation and Licensure, and 3) for which notice of abandonment required by *Neb. Rev. Stat.* § 46-602(8) has been filed with the Department by the licensed water well contractor or pump installation contractor who decommissioned the water well or by the water well owner if the owner decommissioned the water well.

4.94.2 Active Status Water Well - shall mean a Water Well which is in use and which is not an illegal water well.

4.94.3 Agricultural Water Well - shall mean any water well that pumps Ground Water for irrigation and/or Aquaculture uses.

4.94.4 Commingled Water Wells - shall mean two (2) or more Water Wells that are commingled, combined, clustered, or joined and shall be considered for the purpose of these rules and regulations as one Water Well. The combined capacity of commingled wells shall be used as the rated capacity. Commingled wells shall require a well construction permit pursuant to these rules and regulations and shall be subject to the same rules and regulations as any Water Well located within the District.

4.94.5 Dewatering Well - shall mean a water well constructed and used solely for the purpose of lowering the Ground Water table elevation.

4.94.6 Domestic Water Well - shall mean a water well, designed and constructed to pump fifty (50) gallons per minute or less, used by a Person or by a family unit or household for normal household uses and for the irrigation of lands not exceeding two (2) acres in area for the growing of gardens, orchards, and lawns, and keeping domestic animals. Domestic Water Wells are exempt from the application of these rules and regulations.

4.94.7 Illegal Water Well - shall mean 1) any Water Well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection Act, 2) any Water Well not in compliance with the rules and regulations adopted and promulgated pursuant to the Act, 3) any Water Well not properly registered in accordance with *Neb. Rev. Stat.* §§ 46-602 to 46-604, 4) any Water Well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws, or 5) any Water Well which has not been properly decommissioned and which meets any of the following conditions:

4.94.7.1 The Water Well is in such a condition that it cannot be placed in active or inactive status;

4.94.7.2 Any necessary operation equipment has been removed and the well has not been placed in inactive status;

4.94.7.3 The Water Well is in such a state of disrepair that continued use for the purpose for which it was constructed is impractical;

4.94.7.4 The Water Well was constructed after October 1, 1986, but not constructed by a licensed water well contractor or by an individual on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode;

4.94.7.5 The Water Well poses a health or safety hazard;

4.94.7.6 The Water Well is an illegal water well in accordance with *Neb. Rev. Stat.* § 46-706; or

4.94.7.7 The Water Well has been constructed after October 1, 1986, and such well is not in compliance with the standards developed under the Water Well Standards and Contractors' Licensing Act.

Whenever the Department classifies a Water Well as an illegal water well the Landowner may petition the Department to reclassify the Water Well as an Active Status Water Well, an Inactive Status Water Well, or an Abandoned Water Well.

4.94.8 Inactive Status Water Well - shall mean a Water Well that is not currently in use and is in a good state of repair and for which the owner has provided evidence of intent for future use by maintaining the Water Well in a manner which meets the following requirements:

4.94.8.1 The Water Well does not allow impairment of the water quality in the Water Well or of the Ground Water encountered by the Water Well;

4.94.8.2 The top of the Water Well or Water Well casing has a water-tight welded or threaded cover or some other water-tight means to prevent its removal without the use of equipment or tools to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of wastes or contaminants into the Water Well;

4.94.8.3 The pump and pumping column have been removed;

4.93.8.4 All entrances and discharge piping to the Water Well are effectively sealed to prevent the entrance of contaminants; and

4.94.8.5 The Water Well is marked so as to be easily visible and located in a labeled or otherwise marked so as to be easily identified as a Water Well and the area surrounding the Water Well is kept clear of brush, debris, and waste material.

4.94.9 Industrial or Commercial Water Well - shall mean any Water Well that pumps Ground Water at a rate in excess of 50 gallons per minute for use in non-municipal manufacturing, commercial, and/or power generation. Commercial use shall include, but not be limited to, maintenance of the turf of a golf course, Livestock Operations, and Injection Wells.

4.94.10 Irrigation Water Well - shall mean any Water Well that pumps Ground Water to Certified Irrigated Acres located within the District for the production of forage or any agricultural crop.

4.94.11 Monitoring Water Well - shall mean a Water Well that is designed and constructed to provide ongoing hydrologic or water quality information and is not intended for Consumptive Use.

4.94.12 Observation Water Well - shall mean a Water Well that has been cased and is used for the purpose of monitoring static water levels.

4.94.13 Remediation Water Well - shall mean a Water Well, constructed to recovery well standards, for the purpose of withdrawal or treatment of contaminated water, or for the introduction or removal of air, water, or chemicals approved by the state agency with supervisory responsibility for the planned project.

4.94.14 Replacement Water Well - shall mean a Water Well which is constructed to provide water for the same purpose as the original water well and is operating in accordance with any applicable rules and regulations of the District and with any applicable permit from the Department and, if the purpose is for irrigation, the Replacement Water Well delivers water to the same tract of land served by the original water well and 1) replaces a decommissioned water well within one hundred eighty (180) days after the decommissioning of the original water well, 2) replaces a Water Well that has not been decommissioned but will not be used after construction of the new water well and the original water well will be decommissioned within one hundred eighty (180) days after such construction, except that in the case of a municipal water well, the original municipal water well may be used after construction of the new water well but shall be decommissioned within one (1) year after completion of the replacement water well, or 3) the original water well will continue to be used but will be modified and equipped within one hundred eighty (180) days after such construction of the replacement water well to pump fifty (50) gallons per minute or less and will be used only for Range Livestock, monitoring, observation, or any other non-consumptive or deminimis use and is approved by the District on a case-by-case basis. In addition, the following requirements must be met: 1) no replacement irrigation well may be installed for any irrigated acres that have not been certified according to Rule 6.4; and 2) any Replacement Water Well shall be deemed to irrigate the same number of Certified Irrigated Acres as the well it replaces.

4.94.15 Supplemental Water Well - shall mean a Water Well from which Ground Water is added to surface water for irrigation on Certified Irrigated Acres.

4.95 Water Year - shall mean March 1 through October 31, of each calendar year.

4.96 Wellhead Protection Program - shall mean a program to protect any Public Water System from contamination, which has been adopted by a public water supplier consistent with the Safe Drinking Water Act of 1986, as amended.

4.97 Working Day - shall mean Monday through Friday but shall not include Saturday, Sunday, or a federal or state holiday. In computing two Working Days, the day of receipt of the permit is not included and the last day of the two Working Days is included.

## **5. GENERAL PROVISIONS AND PROCEDURES FOR ENFORCEMENT**

5.1 Enforcement - Except as otherwise provided in Rule 7.9, the District may enforce the Act, the Chemigation Act and all rules and regulations adopted pursuant thereto by the issuance of a notice of an alleged violation and/or through the issuance of a Cease and Desist Order, in accordance with the procedures hereinafter set forth and by bringing appropriate actions for the enforcement of such orders in the District Court of the county in which any violation occurs.

5.1.1 A notice of an alleged violation and/or a Cease and Desist Order may, among others, be issued for the following reasons:

5.1.1.1 To enforce any of the provisions of the Act, the Chemigation Act or rules and regulations adopted pursuant thereto, and any order or permit issued pursuant thereto or these rules and regulations;

5.1.1.2 To initiate suits to enforce the provisions of the Act, the Chemigation Act or any rules and regulations adopted pursuant thereto, or any order or permit issued pursuant thereto or these rules and regulations;

5.1.1.3 To restrain the construction, or operation of any Water Well or the withdrawal and use of any water from any well in violation of the Act, the Chemigation Act or in violation of these rules and regulations;

5.1.1.4 To restrain the construction or operation of an Irrigation System or an Irrigation Distribution System, in violation of the Act, the Chemigation Act or in violation of these rules and regulations.

5.1.2 In addition to the authority set forth in *Neb. Rev. Stat.* §§ 46-745 to 46-746 and §§ 46-1101 through 46-1148, the District may enforce these Rules and Regulations through voluntary compliance and/or through enforcement actions. The District may impose penalties, including but not limited to, any one or more of the following:

5.1.2.1 Reduction in whole or part of the amount of any current or future Allocation for a period of time determined by the Board;

5.1.2.2 Reduction in whole or in part of any Carryforward;

5.1.2.3 Reduction in whole or in part of the number of Certified Irrigated Acres in a tract(s);

5.1.2.4 Increase in the amount of any Offset for any use that is in violation of these rules and regulations; and/or

5.1.2.5 Revocation, denial, suspension, or non-renewal of a Chemigation Permit.

5.2 Inspections - Except as otherwise provided in Rule 7.9, a Compliance Inspector may conduct field inspections to confirm compliance with or investigate any alleged violation of these rules and regulations. A Compliance Inspector may conduct a field inspection after showing proper identification and after informing the Alleged Violator, either in person, by certified mail, return receipt requested, or by leaving notice posted at the Alleged Violator's last known address of the suspected violation and the purpose of the inspection. A Compliance Inspector shall be authorized to enter upon the land if necessary for the purpose of conducting an investigation of the alleged violation. After the completion of any investigation, the Compliance Inspector shall file a written report of his or her findings in the District office and shall provide a copy of the report to the Alleged Violator.

5.3 Submission of Inspection Report Alleging Violation and Alleged Violator's Alternatives - If the Compliance Inspector finds that there is reasonable cause to believe that the Alleged Violator has violated the Act, the Chemigation Act or any of these rules and regulations, the Compliance Inspector's report shall be accompanied by a notice to the Alleged Violator of the alternatives available to the Alleged Violator. Alternative actions include but are not limited to the following:

5.3.1 Agree with and accept as true and correct the Compliance Inspector's report and consent in writing to cease and desist from continuing or allowing the recurrence of any such violation; and submit a schedule for corrective action pursuant to Rule 5.4; or

5.3.2 Reject the Compliance Inspector's report and request in writing within seven (7) Working Days of

the receipt of said report that a formal hearing be scheduled and conducted in accordance with the rules and regulations of the District.

5.4 Schedule of Compliance - If the Alleged Violator agrees with the Compliance Inspector's report and further agrees to submit a plan which conforms to these rules and regulations, the Alleged Violator shall submit a plan within ten (10) Working Days following notice by the District. Failure to submit a plan within ten (10) Working Days of such notice shall be deemed a rejection of the Compliance Inspector's report and shall be deemed a request for a hearing.

5.5 Voluntary Compliance - Subsequent to the submission of a plan to take corrective action by the Alleged Violator, the District shall review the Compliance Officer's report, the plan, and any other related or pertinent document necessary to evaluate the plan.

5.5.1 The District within its sole discretion shall determine whether the actions agreed to by the Alleged Violator will, when implemented, bring the Alleged Violator into compliance with these rules and regulations. If the District determines that the proposed actions of the Alleged Violator are adequate and will prevent future violations within a reasonable period of time, such action or plan will be approved and the District will notify the Alleged Violator of the District's approval and provide a schedule of compliance to complete the plan. As part of any voluntary compliance plan, the District may impose penalties including, but not limited to, the reduction in whole or part of any Allocation of water allocated to the Certified Irrigated Acres within a Certified Irrigated Tract that is the subject of the violation.

5.5.2 If the District within its sole discretion determines that implementation of the proposed plan, schedule of compliance, or penalty would be inadequate to prevent further violation of the rules and regulations, the District shall inform the Alleged Violator of its disapproval and shall make proposed changes or additions to the plan in order to obtain conformance with these rules and regulations. An Alleged Violator shall have five (5) Working Days from the receipt of the proposed changes from the District to consent to such additions or changes, agree to negotiate, or reject such changes and request a hearing.

5.6 Hearing - Except as provided in Rule 7.9, if voluntary measures cannot be agreed upon between the District and the Alleged Violator, or if the Alleged Violator rejects the findings of the Compliance Inspector's report, then the Alleged Violator shall be given an opportunity to contest the Compliance Inspector's report, or the schedule of compliance required by the District, at a Board meeting or public hearing to be held no sooner than fifteen (15) calendar days and not more than forty-five (45) calendar days after receipt of the initial notice provided pursuant to Rule 5.3. Notice of the hearing shall be provided to the Alleged Violator and any other Person deemed necessary by the Board. The District's rules for hearings shall govern the conduct of all such hearings. The Alleged Violator shall be further notified that if he or she fails to respond and appear at any scheduled hearing, the Board may proceed to make a final determination as to the alleged violation of these rules and regulations and shall determine if a formal Cease and Desist Order shall be issued and enforced against the Alleged Violator.

5.6.1 The Board may take any and all actions as it deems necessary to cause the Alleged Violator to comply with these rules and regulations. A Cease and Desist Order may be issued at the conclusion of the hearing if deemed necessary and appropriate by the Board.

5.7 Action of the Alleged Violator Following Issuance of Notice of Alleged Violation or a Cease and Desist Order - Any Alleged Violator who has been notified of any alleged violation of the Act, the Chemigation Act or these rules and regulations or of a Cease and Desist Order shall be allowed seven (7) Working Days following receipt of such order, to submit a schedule of compliance for any alleged violation. The District will review the schedule of compliance and within its sole discretion shall determine if such plan satisfies the Act, Chemigation Act or these rules and regulations. If the plan fails to comply with the Act, the Chemigation Act or these rules and regulations, the District may proceed with the enforcement of any Cease and Desist Order.

5.8 Board Authorization to Initiate Court Action - The Board may authorize the initiation of appropriate legal

actions to enforce any action or order of the District.

5.9 Cease and Desist Order; Violation; Penalty - As provided by the Act and the Chemigation Act, any violation of Cease and Desist Order issued by the District pursuant to the Act and the Chemigation Act may be subject to a civil penalty assessed pursuant to *Neb. Rev. Stat.* § 46-746.

**6. GROUND WATER QUANTITY CONTROLS** - The following rules apply to any Ground Water User, Landowner, or Operator in the South Platte NRD Districtwide Ground Water Management Area.

6.1 Moratorium on Well Construction Permits and on New or Expanded Uses - Except as provided hereinafter, no permits to construct a new Water Well in the Management Area will be issued unless a variance is granted by the Board. In addition, the expansion of Irrigated Acres or the increase in the Consumptive Use of Ground Water from any Water Well used for irrigation or any other beneficial purpose, except for the purpose of domestic or Range Livestock wells that pump less than fifty (50) gallons per minute, is prohibited, unless a Variance is granted by the Board or as otherwise provided by *Neb. Rev. Stat.* § 46-740.

6.2 Permit to Construct a Water Well - Any Person who intends to construct a Water Well within the Management Area for any purpose, except for Test Holes, Dewatering Wells with an intended use of ninety (90) calendar days or less, domestic or Range Livestock wells that pump less than fifty (50) gallons per minute, and monitoring or observation wells without a permanent pump installed, shall apply for a permit to construct such Water Well from the District.

6.2.1 Any Application for a permit must be completed by the applicant and filed with the District on forms provided by the District. Once the District receives a completed application, the District shall review the application and either approve, approve with conditions, or deny such permit, within thirty (30) calendar days after the completed application is received.

6.2.2 The applicant shall pay a nonrefundable application fee of fifty dollars (\$50) to the District.

6.2.3 Any Person who fails to obtain a permit required by Rule 6.2 shall make application for a Late Permit on forms provided by the District, and shall pay a nonrefundable late application fee of two-hundred and fifty dollars (\$250) to the District.

6.2.4 If an applicant receives a permit from the District, the applicant shall commence construction as soon as possible but in any event shall complete construction and installation of the equipment necessary to pump water from the Water Well no later than six (6) months after the approval of the permit.

6.2.5 If the applicant fails to complete the construction and installation of the equipment necessary to pump water from the well under the terms of the permit, the District may cancel the permit after ten (10) Working Days written notice to the applicant.

6.2.6 A permit application may be denied, among other reasons, if the District finds 1) that the location or operation of the proposed Water Well or other work is not in accordance with any regulations or Controls adopted by the District, 2) that the proposed use would not be for a beneficial purpose, or 3) if the applicant did not act in good faith in failing to obtain a timely permit.

6.3 Large User Permit - Any Industrial or Commercial User, any Non-Transient Non-Community Public Water Supplier, or any Transient Non-Community Public Water Supplier, who desires to withdraw and/or consumptively use Ground Water in amounts greater than twenty-five (25) million gallons per year, prior to commencing such use, expanding such use in amounts greater than twenty-five (25) million gallons per year, changing such use of any existing Ground Water well, commencing construction of any new or Replacement Water Well, or modifying any existing well to consumptively use greater than twenty-five (25) million gallons per year, shall apply for and receive from the District a permit to authorize such withdrawal and/or use of Ground Water ("Large User Permit").



6.3.1 If the user is supplied by a Municipality, an agreement must be in effect between the District and the Municipality regarding understandings, commitments, and joint responsibilities related to the Large User Permit before the issuance of a Large User Permit.

6.3.2 An application for a Large User Permit shall include the following information:

6.3.2.1 If not supplied by a Municipality, the name and post office address of each owner of the land where the well or wells are or will be located;

6.3.2.2 The name and address of the user or users of the Ground Water;

6.3.2.3 If not supplied by a Municipality, the legal description of the tract of land where the well or wells are or will be located or if supplied by a Municipality who will supply the Ground Water;

6.3.2.4 The legal description of the land on which the Ground Water will be used;

6.3.2.5 If any existing well will be used, the Department's Water Well registration number for the well, or if supplied by a Municipality, the name of the Municipality;

6.3.2.6 If a new or Replacement Water Well will be constructed, the District's Water Well construction permit number;

6.3.2.7 A detailed description of the nature of the proposed use;

6.3.2.8 If not supplied by a Municipality, the maximum rate of withdrawal from the well or wells;

6.3.2.9 If not supplied by a Municipality, the range of maximum and average amounts of water proposed to be withdrawn on an annual basis;

6.3.2.10 The amount of Ground Water to be consumptively used from the water pumped from the well or wells or from a Municipality and a detailed explanation of how the amount of consumptive use was calculated;

6.3.2.11 Identification of any alternative sources of surface water or Ground Water available to the applicant for the proposed use and the reasons why the alternative source or sources will not be used;

6.3.2.12 An assessment of the effects that the proposed withdrawal and/or consumptive use of Ground Water may have on existing Ground Water Users, on existing surface water users, and on Ground Water and surface water supplies needed to meet present or reasonable future demands within the state or to comply with any interstate water compact, decree, or any other formal state contract or agreement;

6.3.2.13 For a Non-Transient Non-Community Public Water Supplier or a Transient Non-Community Public Water Supplier a proposed Offset for the amount of Consumptive Use specified in accordance with 6.3.2.10 and a detailed explanation of how the proposed Offset was calculated;

6.3.2.14 If not supplied by a Municipality, an assessment of the effects of the proposed withdrawal and use on the environment in the vicinity of the proposed withdrawal and in the vicinity of the proposed use; and

6.3.2.15 Any other information the applicant deems relevant to the District's criteria for approval of the proposed withdrawal and/or use, which are listed in 6.3.3 and 6.3.4.

6.3.3 The District may deny an application or condition the approval of any Large User Permit when necessary to:

6.3.3.1 Ensure compliance with the District's Management Area;

6.3.3.2 Prevent adverse effects on other Ground Water Users or on surface water users;

6.3.3.3 Prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement; and

6.3.3.4 Protect the public interest and prevent detriment to the public welfare.

6.3.4 To determine whether approval of an application for a Large User Permit is in the public interest or detrimental to the public welfare, the District shall consider the following:

6.3.4.1 Whether the proposed use is a beneficial use of Ground Water;

6.3.4.2 The availability to the applicant of alternative sources of surface water or Ground Water for the proposed use;

6.3.4.3 Any negative effect of the proposed withdrawal and/or use on Ground Water or surface water supplies needed to meet reasonable future demands for water within the state;

6.3.4.4 The cumulative effects of the proposed withdrawal and/or use relative to the matters listed in 6.3.4.1 through 6.3.4.3 when considered in conjunction with all other Ground Water uses;

6.3.4.5 Whether the proposed withdrawal and/or use is consistent with the integrated management plan; and

6.3.4.6 Any other factors that the District deems relevant to protect the public interest and prevent detriment to the public welfare.

6.3.5 All Large User Permits granted by the District shall be conditioned on the following:

6.3.5.1 If not supplied by a Municipality, the applicant's installation and maintenance of a District approved Flow Meter on the well or wells that will be used for withdrawal and/or use;

6.3.5.2 If not supplied by a Municipality, the applicant's submission of an annual report to the District, by October 1 of each year, containing the total volume of water pumped and total volume of Ground Water consumptively used in the preceding year (August 1 to July 31);

6.3.5.3 If supplied by a Municipality, the applicant's submission of an annual report to the District by October 1 of each year, containing the total volume of Ground Water consumptively used in the preceding year (August 1 to July 31); and/or

6.3.5.4 Compliance with all applicable statutes and rules and regulations, including any statutes or rules and regulations adopted after the District's approval of the Permit.

## 6.4 Certified Irrigated Uses

6.4.1 Certification of Irrigated Acres - Any Ground Water User, Landowner, or Operator who uses Ground Water to irrigate must obtain certification from the District for each irrigated tract of land. No Ground Water User, Landowner, or Operator may irrigate with Ground Water on a tract of land within the Management Area until he or she obtains the certification of irrigated acres from the District.

6.4.2 Consideration of Variance Request Applications and Decision on Certification - All applications for Variance requests must be submitted to the District's office on forms supplied by the District.

6.4.2.1 In considering each Variance request application, the District may take into consideration the following:

6.4.2.1.1 Information submitted with the application;

6.4.2.1.2 Records of the U.S. Department of Agriculture;

6.4.2.1.3 Records of the county assessor;

6.4.2.1.4 Evidence submitted by the applicant or the District's staff; and

6.4.2.1.5 Any other information deemed relevant by the District.

6.4.2.2 A majority vote by the members of the Board of Directors present at any public meeting of the Board shall be required for the approval of a Variance for certification. The Board, in its sole discretion, may reconsider any determination on certification.

6.4.3 Modification of Certified Irrigated Acres or Certified Irrigated Tracts - Upon the effective date of these amendments (April 10, 2015) the SPNRD will no longer allow additional Certified Irrigated Acres or Certified Irrigated Tracts.

6.4.3.1 Modifications of existing Certified Irrigated Acres and Certified Irrigated Tracts will be allowed through the Transfer(s) as outlined in Rules 6.7 and 8.2.

6.5 Flow Meters - Except as otherwise provided in this section (Rule 6.5), any Ground Water User, Landowner, or Operator, who uses any Water Well or wells capable of pumping greater than fifty (50) gallons per minute shall be required to install a Flow Meter on such well subject to the following terms and conditions.

6.5.1 A Water Well which serves two (2) or more uses, shall have a separate Flow Meter installed for each use, unless one of the uses is for domestic or Range Livestock. In such case, a Flow Meter will not be required on the domestic or Range Livestock use.

6.5.2 Any Ground Water User may temporarily defer the installation of a Flow Meter if the well will not be used for a period of no more than five (5) years. Such Ground Water User shall notify the District on forms supplied by the District of such non-use and specify the period up to five (5) years ("temporary deferment"). A temporary deferment may be renewed for an additional five (5) year period.

6.5.2.1 For all Irrigation Water Wells that are placed in Temporary Deferment.

6.5.2.1.1 The District staff, upon receiving such notice of Temporary Deferment, shall inspect such well and tag it with a red tag, which shall signify that the Temporary Deferment has been approved and that such well cannot be used during the time period specified in such notice.

6.5.2.1.2 The number of Certified Irrigated Acres and/or tracts which have been temporarily deferred will remain with the well-used to irrigate such acres and/or tracts, during the Temporary Deferment and cannot be transferred or used during such time.

6.5.2.1.2.1 Any Certified Irrigated Acres and/or tracts that have been temporarily deferred will not receive an Allocation during such time.

6.5.2.1.3 If during the period of Temporary Deferment, a Ground Water User, desires to terminate the Temporary Deferment, he or she shall notify the District of such termination and a Flow Meter shall be installed on any such well within fifteen (15) days of such notification. After the Flow Meter has been installed, District staff shall remove the red tag and the well may then be used.

6.5.2.1.3.1 A Temporary Deferment may only be terminated during the time period between November 1 through February 28 of each year.

6.5.2.1.4 When the well is returned to active status, the Allocation amount for the well and the corresponding Certified Irrigated Acres will be prorated on the basis of the portion of the Allocation remaining in the Allocation Period.

6.5.2.2 For all Industrial Water Wells that are placed in Temporary Deferment.

6.5.2.2.1 The District staff, upon receiving such notice of Temporary Deferment, shall inspect such well and tag it with a red tag, which shall signify that the Temporary Deferment has been approved and that such well may not be used during the time period approved by the District.

6.5.2.2.2 Any Industrial Water Well that has been approved for Temporary Deferment by the District, which shall include a well which has been granted a Large User Permit pursuant to Rule 6.3, may only be returned to service after approval by the District.

6.5.2.2.3 Once approval has been granted, a Flow Meter shall be installed within fifteen (15) days of such approval.

6.5.2.2.4 The baseline established for the well will remain with the well during Temporary Deferment. Once the well is returned to active service, the baseline amount will become active, and adjustments will be made for the current five (5) year accounting period.

6.5.3 Flow Meter Specifications and Requirements – Any Flow Meter that a Ground Water User installs, operates, or maintains for the purpose of compliance with these rules and regulations.

6.5.3.1 Shall be selected from a list and in conformance with a **technical manual**, compiled and approved by the Board of Directors of the District. The Board may amend this list and manual from time to time without amending these rules and regulations. The approved list and manual shall be available for inspection at the District office during regular business hours.

6.5.3.2 All Flow Meters shall comply with the specifications and requirements stated herein. The meter(s) shall be accurate to within five (5) percent of a meter operated and maintained by District staff. In any event, all non-complying Flow Meters must either be repaired or replaced in a reasonable time period agreed upon by the District.

6.5.3.3 Each Flow Meter shall be installed by a **technician approved by the District** according to the manufacturer's specifications and calibrated to the pipe size on each well. All Flow Meters shall be permanently mounted, or installed to enable the District to seal the Flow Meter. Calibration shall be maintained at an accuracy of plus or minus two (2) percent of a normal flow range.

6.5.3.3.1 Each Flow Meter shall be maintained by a technician approved by the District at least once every three (3) years, no later than the end of the third calendar year, unless the Ground Water User has received an exemption by the District.

6.5.3.3.1.1 A maintenance exemption will be granted if a well has not been operated in the past three (3) years and has no plans to operate during the next Water Year.

6.5.3.3.1.2 If the Ground Water User intends to return the well to active service, he or she shall notify the District and such Flow Meter shall receive maintenance

at that time and subsequently follow the three (3) year maintenance schedule.

6.5.3.4 For wells that pump more than fifty (50) gallons per minute, the meter registry of each Flow Meter shall have a visual volume recording totalizer, which shall record the volume of water in Acre-Inches. Each Flow Meter shall also have a clearly visible and readable analog or digital display that provides a real time reading of the rate of flow of water through the Flow Meter.

6.5.3.5 For wells that pump fifty (50) gallons per minute or less, the meter registry of each Flow Meter shall have a visual volume recording totalizer, which shall record the volume of water in gallons, acre-feet or Acre-Inches.

6.5.3.6 The registry of each Flow Meter shall be protected from the elements of weather.

6.5.3.7 Totalizers shall have sufficient capacity to record the quantity of water withdrawn from each well or Commingled Water Wells for the period of one (1) year.

6.5.3.8 District personnel shall seal each Flow Meter. No seal shall be removed, broken, or unfastened without prior approval of the District. If a seal becomes damaged, the Ground Water User shall notify the District by the close of business the following day.

6.5.3.9 Each Flow Meter shall measure the entire amount of water pumped by a well or Commingled Water Wells in conformance with all specifications and requirements contained within these rules and regulations. In the event that water from two (2) or more wells is commingled, one (1) Flow Meter may be installed at a point after the water has been commingled.

#### 6.5.4 Flow Meter Readings, Inspections and Maintenance

6.5.4.1 The District shall have the power and authority, pursuant to *Neb. Rev. Stat.* § 2-3232(1), to enter upon any land, after notifying the owner or occupier thereof, for the purpose of conducting studies, investigations, surveys, and research to carry out its authorized purposes.

6.5.4.2 Each Flow Meter shall be kept in good working condition and clear of debris, vegetative growth, or other material that could interfere with or impede the operation or performance of such Flow Meter.

6.5.4.3 A Ground Water User, subject to these rules and regulations shall ensure that each Flow Meter installed on each well is fully functional, properly maintained, and in good working condition.

6.5.4.4 Any malfunctioning Flow Meter shall be reported to the District office at Sidney, Nebraska, by the Ground Water User, within twenty-four (24) hours after discovery, unless such discovery is on a weekend or holiday. In that event, such malfunction shall be reported before the office closes on the first Working Day following the holiday. During the time when such Flow Meter is malfunctioning or removed from the well for service, repair, or replacement, the Ground Water User, shall use a method approved by the District to determine the volume of water withdrawn from the well. The Ground Water User shall use his or her best efforts to put the Flow Meter back into service in a reasonable time period agreed upon by the District.

6.5.4.5 The District may require any Ground Water User to provide information that will enable District staff to determine the amount of energy used to operate any well on which a Flow Meter has been installed. Such information shall be provided upon request, or the Ground Water User may authorize District staff to obtain such information from the utility providing electricity to the

well. District staff may request such information if a Flow Meter is malfunctioning, or grounds exist to believe the Flow Meter reading is incorrect. If any power source on a well within the Management Area is equipped with an hour meter, the District may require a Ground Water User, to provide appropriate readings from said hour meter.

6.5.5 Damage to or Tampering with Flow Meters

6.5.5.1 It shall be a violation of these rules and regulations for any Person to willfully damage, alter, remove, reset, adjust, manipulate, obstruct, or in any manner interfere with or tamper with any Flow Meter within the Management Area, or to cause, procure, or direct any other Person to do so. Removing, damaging, or unfastening a seal affixed to a Flow Meter by District staff will be considered as tampering with a Flow Meter within the meaning of this subsection 6.5.5.1.

6.6 Allocation System for Agricultural Uses - The hydrologic characteristics of each subarea were considered in arriving at the amounts for Allocation purposes. Those subareas are shown on the maps attached as Appendix C .

6.6.1 Allocations for Irrigation Uses

6.6.1.1 Allocation amounts in Acre-Inches by subarea for the 2022 through 2024 Allocation Period are as follows:

|                                                                  |       | <u>Allocation Periods</u> |
|------------------------------------------------------------------|-------|---------------------------|
| Subarea A – Wyoming State Line to Oliver Reservoir (Road 27)     | = 42” | (3-year total)            |
| Subarea B – Oliver Reservoir (Road 27) to Buffalo Bend (Road 87) | = 42” | (3-year total)            |
| Subarea C – Buffalo Bend (Road 87) to Sidney (Road 115)          | = 42” | (3-year total)            |
| Subarea D – Sidney (Road 115) to Colorado State Line             | = 48” | (3-year total)            |
| Subarea E – South Platte Valley                                  | = 48” | (3-year total)            |
| Subarea F – Tablelands                                           | = 39” | (3-year total)            |

6.6.1.1.1 Allocations in subareas A, B, C, D, E and F will have a three (3) year Allocation Period.

6.6.1.1.1.1 In 2024, the Board will set Allocations for a new three (3) year Allocation Period, to commence in 2025 for all subareas.

6.6.1.2 The Board intends to set each Allocation approximately one (1) year in advance of each new Allocation Period.

6.6.1.3 Carryforward of up to ten (10) Acre-Inches is allowed following the three (3) year Allocation Period in Subareas A, B, C, D, E and F, and every Allocation Period thereafter. The cap on the amount of Carryforward (“Carryforward Cap”) that may be accumulated over multiple Allocation Periods and used in subsequent Allocation Periods is ten (10) Acre-Inches.

6.6.1.4 Use that exceeds the total Allocation shall result in the following penalties:

6.6.1.4.1 For every inch that exceeds the total Allocation up to a maximum of three (3) additional inches per acre, an equal number of inches shall be subtracted from the next Allocation Period; and

6.6.1.4.2 For every inch that exceeds the three (3) inches per acre maximum established in Rule 6.6.1.4.1, twice the number of inches shall be subtracted from the next Allocation Period.

6.6.1.5 Any Certified Irrigated Tract that is enrolled in any federal and/or state water conservation program, shall not receive an Allocation for the period of time that such tract is enrolled in such program. Provided however, if such tract is removed from such program, then it will become eligible to receive a prorated Allocation for the remaining year(s) of the Allocation Period.

6.6.1.6 A Ground Water User shall not be entitled to use Ground Water for any Allocation Period, unless such user shall have a positive balance in his or her Total Allocation at the end of each year for any such Allocation Period. The District will notify Ground Water Users, following the District's annual reading of Flow Meters, whether they have a positive balance in their Total Allocation.

6.6.1.7 Supplemental Water Well - The Allocations listed for Subareas A, B, C, D and E in accordance with Rule 6.6.1.1, will not be reduced by any amount of surface water delivered to or transferred to Certified Irrigated Acres that would otherwise be irrigated from such Supplemental Water Well.

#### 6.6.2 Allocations for Aquaculture Uses

6.6.2.1 Any Landowner or Operator using Ground Water for Aquaculture purposes shall be required to provide the District with records showing Consumptive Use for the period between August 1, 2001 through July 31, 2006.

6.6.2.2 The Board shall determine an Allocation to the Aquaculture facility based upon records submitted and select the highest amount of water consumptively used for a twelve (12) month period. If no records are available, all water supplied to the Aquaculture use shall be metered and conditioned upon Offsets approved by the Board, prior to any water delivery to the Aquaculture facility.

### 6.7 Transfers

#### 6.7.1 General Conditions for Transfers Permitted by the District

6.7.1.1 Any Person who seeks to Transfer water use from one location to another shall apply to the Board for a transfer permit using forms provided by the District. No Transfer shall be commenced unless and until the District grants the permit application.

6.7.1.2 The Board shall not approve a Transfer unless all Certified Irrigated Tracts have either unused Allocation or Carryforward.

6.7.1.3 Transfers shall be conditioned upon and limited to those in which the land where the right is transferred from remains in dryland agricultural use, or such other non-consumptive uses as have been approved by the District. This restriction shall run with the land, and apply to the transferors' heirs, successors, and assigns. The owner of the land will be required to sign an affidavit and acceptance of Offset/mitigation obligations that a new Consumptive Use will not be created on the land from where the right was transferred. Such affidavit will be filed with the county land records.

6.7.1.4 Any well from which the Board has approved a Transfer shall not be used to irrigate land, which is not certified for Ground Water irrigation. If the well is no longer used to irrigate land certified for Ground Water irrigation, then the well shall be decommissioned within one hundred and eighty (180) days of the Transfer or modified and equipped within the same period of time to pump fifty (50) gallons per minute or less. Any modified well may only be used for Range Livestock, monitoring, observation, or any other non-consumptive or de minimis use approved by the Board.

6.7.1.5 Any Person who seeks to Transfer a water use from one location to another shall have the burden of establishing to the satisfaction of the Board each of the requirements set forth above.

6.7.1.6 Transfers are prohibited within two (2) miles of a city limit, and within the city limit. The following Transfers shall not be permitted for any area located within city limits and two (2) miles of any city of the First Class, which shall be determined at the time that the Transfer is sought to be approved:

- 6.7.1.6.1 The withdrawal and Transfer of Ground Water Off the Overlying Land;
- 6.7.1.6.2 The change of the location of the use of Ground Water for irrigation purposes;
- 6.7.1.6.3 The permanent Transfer of Certified Irrigated Acres;
- 6.7.1.6.4 The permanent Transfer of Allocation; and
- 6.7.1.6.5 The permanent Transfer of Type of Use or Addition of Use.

6.7.1.7 Transfers are prohibited within one (1) mile of a city of Second Class or Village limit, and within the city of Second Class or Village limit. The following Transfers shall not be permitted for any area located within one (1) mile of a city of the Second Class or Village limit, and within any city of the Second Class or Village limit, which shall be determined at the time that the Transfer is sought to be approved:

- 6.7.1.7.1 The withdrawal and Transfer of Ground Water Off the Overlying Land;
- 6.7.1.7.2 The change of the location of the use of Ground Water for irrigation purposes;
- 6.7.1.7.3 The permanent Transfer of Certified Irrigated Acres;
- 6.7.1.7.4 The permanent Transfer of Allocation; and
- 6.7.1.7.5 The permanent Transfer of Type of Use or Addition of Use.

6.7.1.8 Unless otherwise provided in the following Rules in this 6.7.1.8, any Person requesting a Transfer is required to comply with Rule 6.7.8, 6.7.9, 6.7.10 and 6.7.11.

6.7.2 Physical Transfer of Ground Water Off Overlying Land Located in the District; Permit Required - Except as provided in Rule 6.7.3 below, any Person who withdraws Ground Water from a well located within the District and physically Transfers or intends to Transfer such water off the overlying land shall before commencing the Transfer apply for and receive a Transfer permit from the District. An application for a Transfer shall be submitted on forms provided by the District.

6.7.2.1 Permits will not be granted under this section if the Ground Water is discharged into an open ditch and transported by such ditch to a location other than the overlying land.

6.7.2.2 Permits will be required from the Department when Ground Water is discharged into a natural stream or channel and transported by such natural stream or channel for use elsewhere.

6.7.2.3 Changes in Certified Irrigated Tracts or Certified Irrigated Acres - Whenever the location of any Certified Irrigated Tract or the number of Certified Irrigated Acres change as a result of the physical Transfer of Ground Water off the land where the water is withdrawn, pursuant to Rule 6.7.2, the Landowner or Person in control of any Certified Irrigated Tract or Certified Irrigated Acres shall notify the District in writing of such change within thirty (30) days of the initiation of the Transfer.

6.7.3 Exceptions to Rule 6.7.2 No Transfer permit shall be required pursuant to Rule 6.7.2 if the withdrawal and physical Transfer of Ground Water complies with any one or more of the following exceptions; provided however, that notice of such Transfer shall be given to the District within thirty (30) days of the commencement of such Transfer:

6.7.3.1 The withdrawal and Transfer of Ground Water was begun prior to the effective date of Rule 6.7.2 and was at that time in compliance with all applicable District rules and regulations and all applicable state statutes and regulations.

6.7.3.2 The proposed withdrawal and Transfer of Ground Water is for domestic purposes only as set forth in *Neb. Rev. Stat.* § 46-691.01.



6.7.3.3 The proposed withdrawal and Transfer of use is solely for the purpose of providing water to Range Livestock.

6.7.3.4 The withdrawal and Transfer has been approved by the Department prior to July 16, 2004.

6.7.3.5 The proposed withdrawal and Transfer is for agricultural purposes, or for any purpose pursuant to a Ground Water remediation plan as required under the Nebraska Environmental Protection Act, pursuant to *Neb. Rev. Stat.* § 46-291, and all locations where the water will be used for such purposes are no more than two (2) miles from the location(s) of the well(s) from which the Ground Water is withdrawn.

6.7.3.6 If a Replacement Water Well is constructed, the original well may be modified and equipped to pump fifty (50) gallons per minute or less and be used only for Range Livestock, monitoring, observation, or any other non-consumptive or deminimis use approved by the District.

6.7.3.7 Water Distribution Systems owned by a Municipality will be exempt from Rule 6.7.1.6 and 6.7.1.7.

6.7.4 Transfer of Type of Use or Addition of Use of Ground Water - Any Person who withdraws Ground Water from a well located within the District and intends to Transfer the type of use of that water (e.g. irrigation to industrial) or adds a type of use of Ground Water to the well (e.g. adds an industrial use to an existing irrigation well), shall before commencing the Transfer apply on forms provided by the District, and receive a Transfer permit from the District.

6.7.4.1 No change in the type of use of Ground Water shall be approved unless such change results in no increase in the Historic Consumptive Use or an Offset is provided for any increase in Historic Consumptive Use of the Ground Water to be transferred. If a type of use of Ground Water is added to the well, the transfer permit will not be approved unless there is no increase in Historic Consumptive Use or an Offset is provided for any increase in Historical Consumptive Use.

6.7.4.1.1 In the case where a type of use of Ground Water is added to the well, a separate Flow Meter will be required for each use, unless one of the uses is for domestic or Range Livestock. In such case, a Flow Meter will not be required on the domestic or Range Livestock use.

6.7.4.2 No Person shall use a water well for purposes other than its registered purpose until the Water Well registration has been changed to the intended new use or the additional use has been added to the registration.

6.7.4.2.1 In the case of a Replacement Water Well, a Person may modify and equip the original Water Well to be used for Range Livestock, monitoring, observation, or any other non-consumptive or deminimis use approved by the District.

6.7.4.3 The change to a new use or the addition of a use shall be made by filing a Water Well registration modification with the Department and the change must be in conformance with *Neb. Rev. Stat.* §§ 46-609(1) and 46-651.

6.7.5 Transfer of Certified Irrigated Acres

6.7.5.1 Permanent or temporary Transfers of Certified Irrigated Acres may occur only if the following conditions are met:

- 6.7.5.1.1 No Transfer shall cross county boundaries within that portion of an Allocation Subarea (Allocation Subareas and county lines are shown on the attached maps in Appendix C);
- 6.7.5.1.2 No Transfer shall be allowed between Allocation Subareas or across a different Allocation Subarea;
- 6.7.5.1.3 Any Transfer within that portion of an Allocation Subarea shall be limited to Transfers within a Floating Township (Allocation Subareas and county lines are shown on the attached maps in Appendix C); and
- 6.7.5.1.4 Any Transfer must be approved by the Board and is subject to conditions that may be imposed by the Board.

6.7.5.2 Unless the Board approves a Variance, Transfers of Certified Irrigated Acres are prohibited until 1) three (3) irrigation seasons following installation of a Flow Meter on the affected well have been completed in order to provide an irrigation history, and 2) an Allocation system has been implemented pursuant to these rules.

6.7.5.3 In order to Transfer one hundred percent (100%) of the Certified Irrigated Acres, at least fifty percent (50%) or more of the Allocation must have been used during the Allocation Period, and proof of such use must accompany the application submitted to the Board.

6.7.5.4 Transfers of less than one hundred percent (100%) of the Certified Irrigated Acres may occur when less than fifty percent (50%) of the Allocation has been used during the Allocation Period. In such instances, the applicant may apply to Transfer the amount of the Certified Irrigated Acres equal to the percent use of the Allocation for the Allocation Period.

6.7.5.5 The permanent Transfer of Certified Irrigated Acres may be accomplished by decertifying the Certified Irrigated Acres and recertifying the transferred acres.

6.7.5.6 Transfers of Ground Water Certified Irrigated Acres from land that is also served by surface water will not be permitted unless the surface water appropriation is relinquished for that parcel of land, an Offset is provided for the new acres to be irrigated, or that surface water right is transferred to the same acres the Ground Water is being transferred to.

6.7.5.7 Certified Irrigated Acres served by Ground Water and Surface Water

6.7.5.7.1 Transfers of Ground Water Certified Irrigated Acres from land that is also served by surface water will not be permitted unless the surface water appropriation is relinquished for that land, an Offset is provided for the new acres to be irrigated, or the Ground Water Certified Irrigated Acres are being transferred to the same acres to which the surface water right is transferred.

6.7.5.7.2 Ground Water Certified Irrigated Acres served by a Supplemental Well will be decertified or proportionately reduced whenever a surface water right is transferred or otherwise eliminated, unless a provision is made to prevent an increase in the Consumptive Use of Ground Water, an Offset is provided for the increased Consumptive Use of Ground Water, or the Ground Water Certified Irrigated Acres are transferred to the same acres to which the surface water right is transferred.

6.7.5.8 An application for a Transfer of Certified Irrigated Acres shall include, but not be limited to the following:

6.7.5.8.1 Application submitted on a District form;

6.7.5.8.2 Proof of ownership from the tax assessor for each Certified Irrigated Tract involved in the Transfer; and

6.7.5.8.3 An aerial photograph showing tracts to be involved in the Transfer.

6.7.5.9 Nothing contained in Rule 6.7.5 is intended or shall be construed as:

- 6.7.5.9.1 Permitting the development of any new well; or
- 6.7.5.9.2 Prohibiting a Person from pursuing a Variance from these rules and regulations, pursuant to Rule 8.

#### 6.7.6 Transfer of Allocation

6.7.6.1 Permanent or temporary Transfers of Allocation may occur only if the following conditions are met:

6.7.6.1.1 No Transfer shall cross county boundaries within that portion of an Allocation Subarea (Allocation Subareas and county lines are shown on the attached maps in Appendix C);

6.7.6.1.2 No Transfer shall be allowed between Allocation Subareas or across a different Allocation Subarea;

6.7.6.1.3 Any Transfer within that portion of an Allocation Subarea shall be limited to Transfers within a Floating Township (Allocation Subareas and county lines are shown on the attached maps in Appendix C); and

6.7.6.1.4 Any Transfer must be approved by the Board and is subject to conditions that may be imposed by the Board.

6.7.6.2 Temporary full or partial Transfers of Allocation may occur; however, if the temporary full Transfer of Allocation is requested, the well, that would otherwise be used if the Transfer was not requested, may not be used during the period covered by the Transfer and must be configured to prevent the possibility of contamination of the Ground Water and/or the Flow Meter must remain in place.

6.7.6.3 Permanent full or partial Transfers of Allocation may occur; however, if the permanent full Transfer of Allocation is requested, the well, that would otherwise be used if the Transfer was not requested, shall 1) be decommissioned or modified and equipped to be used for Range Livestock, monitoring, observation, or any other non-consumptive or deminimis use approved by the District, 2) if applicable, be abandoned with a notice of abandonment submitted to the Department or modified according to its new use by submitting a modification form to the Department, and 3) have its Certified Irrigated Acres decertified by the District.

6.7.6.4 Nothing contained in Rule 6.7.6 is intended or shall be construed as:

6.7.6.4.1 Permitting the development of any new well; or

6.7.6.4.2 Prohibiting a Person from pursuing a Variance from these rules and regulations, pursuant to Rule 8.

6.7.7 Transfers of Ground Water from Outside the District to Inside the District - District approval is required before Ground Water is transferred from a well located outside the District for use within the District, unless such Transfer began before the effective date of these rules and regulations or the water is used solely for domestic or Range Livestock purposes. Such approval shall be granted if the proposed Transfer of the Ground Water is not inconsistent with the District's rules and regulations and if the applicant agrees that such approval may be conditioned on the water use being in conformance with District rules and regulations relating to the use of water withdrawn inside the District. The applicant shall provide the District with such information as the District deems necessary to make such determinations.

#### 6.7.8 Municipal Transfer Permits

6.7.8.1 The District shall approve the withdrawal and transport of Ground Water when a public water supplier providing water for municipal purposes receives a permit from the Department pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act. Any public water supplier filing an application for a permit with the Department under the Municipal and

Rural Domestic Ground Water Transfers Permit Act, shall at the same time submit a copy of the application to the District.

6.7.8.1.1 Any Variance approved by the Board before a Permit is granted by the Department shall be forwarded to the Department. If the Variance is granted with any condition, such condition including any monitoring and/or compliance conditions shall be clearly stated on the Variance.

6.7.8.1.2 When the Department initiates consultation with the District regarding a permit application, the District shall advise the Department of any unmet obligations on the part of the applicant (e.g. Variance not yet applied for/or granted).

6.7.8.2 Any public water supply that crosses a municipal boundary and is not permitted under the Municipal and Rural Domestic Ground Water Transfers Permit Act is required to obtain a transfer permit from the District in accordance with Rule 6.7.2.

6.7.8.2.1 Any Variance or permit application for municipal use granted or submitted to the District shall be forwarded to the Department for review.

6.7.8.2.2 A Water Well construction permit shall not be issued until the Board has granted a Variance to the moratorium on the issuance of Water Well construction permits and has approved the Transfer permit.

6.7.8.2.3 In considering the granting of a Transfer permit for a municipal Transfer, the District shall examine the factors found in Rules 6.7.11.9, 6.7.11.10, and 6.7.11.11 including, the following:

6.7.8.2.3.1 Whether the proposed withdrawal, use, and Transfer is reasonable;

6.7.8.2.3.2 Whether the proposed withdrawal, use, and Transfer is not contrary to the conservation and beneficial use of Ground Water;

6.7.8.2.3.3 Whether the proposed withdrawal, use, and Transfer is not otherwise detrimental to the public welfare; and

6.7.8.2.3.4 Nature of the proposed use.

6.7.8.2.4 Any permit granted for the construction of a well and the Transfer of Ground Water shall be filed with the Department, along with the applicant's Water Well registration.

#### 6.7.9 Industrial Transfer Permits

6.7.9.1 Any Commercial or Industrial Water User who has obtained a Transfer permit or approval from the Department pursuant to the Industrial Ground Water Regulatory Act is not required to obtain a Transfer permit from the District; provided however, such user shall advise the District at the time an application is submitted to the Department.

6.7.9.1.1 Any Variance approved by the Board for the Industrial or Commercial Water User before or during the permitting process before the Department shall be forwarded to the Department. Any condition or monitoring and/or compliance provisions of the Variance shall be clearly stated on the Variance.

6.7.9.1.2 When the Department initiates consultation with the District regarding a permit application, the District shall advise the Department of any unmet obligations on the part of the applicant (e.g. Variance not yet applied for/or granted).

6.7.9.1.3 A water well construction permit shall not be issued to any applicant until the industrial transfer permit has been granted or approved by the Department, a copy of the permit is on file with the District, and a Variance to the moratorium on the issuance of Water Well construction permits has been granted by the Board.

6.7.9.2 Industrial transfers that are not required to be permitted under the Industrial Ground Water Regulatory Act shall require a Transfer permit from the District.

6.7.9.2.1 Copies of any Variances or District permit applications for industrial uses shall be forwarded to the Department for review.

6.7.9.2.2 A Water Well construction permit shall not be granted or approved until the Board has granted a Variance to the moratorium on the issuance of Water Well construction permits and has approved a Transfer permit.

6.7.9.2.3 In considering any Transfer permit application, the District shall examine the factors found in Rules 6.7.11.9, 6.7.11.10, and 6.7.11.11 in addition to the following:

6.7.9.2.3.1 Possible adverse effects on existing surface or Ground Water Users;

6.7.9.2.3.2 Effect on surface or Ground Water supplies needed to meet reasonably anticipated domestic and agricultural demands in the area of the proposed withdrawal;

6.7.9.2.3.3 Economic benefit of the proposed use;

6.7.9.2.3.4 Social and economic benefits of existing uses of surface or Ground Water in the area;

6.7.9.2.3.5 Any waivers of liability from existing users filed with the District;

6.7.9.2.3.6 Effects on any interstate compacts or formal state agreements; and

6.7.9.2.3.7 Other factors reasonably affecting the equity of granting the permit.

6.7.9.2.4 Copies of both the Water Well construction permit and the Transfer permit granted or approved by the District shall be filed by the applicant along with the Water Well registration with the Department.

#### 6.7.10 Transfer Out of State

6.7.10.1 Any application for the Transfer of Ground Water out of state pursuant to *Neb. Rev. Stat.* § 46-613.01 requires approval of the District, but will not be considered until the Department has approved or denied the required transfer permit.

6.7.10.2 Any Person wishing to Transfer Ground Water to an adjoining state shall advise the District of the proposed Transfer at the same time that such Person submits a permit application to the Department.

6.7.10.3 When the Department initiates consultation with the District regarding a permit application, the District shall respond with the following:

6.7.10.3.1 The District shall advise the Department of any unmet obligations on the part of the applicant under District rules (e.g. Variance not yet applied for or granted);

6.7.10.3.2 Any formal action taken by the Board adopting any Offset for uses other than municipal and industrial uses determined by the District or the Department to be necessary to maintain compliance with any interstate compacts or formal state agreements or to mitigate any effects to surrounding Ground Water Users or surface water appropriators; and

6.7.10.3.3 The nature of any required Offset and any enforcement provisions of such Offsets.

6.7.10.4 A water well construction permit shall not be granted or approved until a permit to Transfer Ground Water to an adjoining state has been obtained from the Department and a copy of the permit has been furnished to the District.

#### 6.7.11 Application and Procedures for Transfer Permit(s)

6.7.11.1 An application for a District permit to Transfer under Rules 6.7.2, 6.7.4, 6.7.5, 6.7.6, 6.7.7, 6.7.8.2, and 6.7.9.2 shall include the following information:

6.7.11.1.1 The name and post office address of each owner of the land where the well or wells are or will be located, and if another Person or Persons operate such well, the name and address of such Person or Persons;

6.7.11.1.2 The name and post office address of the owner or owners of the land where the water is to be transferred for use;

- 6.7.11.1.3 The legal description of the tract of land where the well or wells are or will be located;
- 6.7.11.1.4 The legal description of the tract of land where the water is to be transferred for use;
- 6.7.11.1.5 If an existing well will be used, the Department Water Well registration number for such well;
- 6.7.11.1.6 The nature of the proposed use;
- 6.7.11.1.7 The maximum rate of withdrawal from the well or wells to be used as the source of water for the Transfer;
- 6.7.11.1.8 The range of the maximum and average amounts of water proposed to be withdrawn and transferred on an annual basis;
- 6.7.11.1.9 If the withdrawal and Transfer is temporary, the time period for which a District permit is being sought;
- 6.7.11.1.10 An aerial photo or photos showing the proposed point(s) of withdrawal, the proposed point(s) of delivery, and the Transfer route(s);
- 6.7.11.1.11 Identification of any alternative sources of surface water or Ground Water available to the applicant for the proposed use and the reasons why use of such alternative source or sources is not being sought;
- 6.7.11.1.12 An assessment of the effects of the proposed withdrawal, Transfer, and use on existing Ground Water Users, on existing surface water appropriators, and on Ground Water and surface water supplies needed to meet present or reasonable future demands within the state or to comply with any interstate water compact or decree or with any other formal state contract or agreement;
- 6.7.11.1.13 An assessment of the effects of the proposed withdrawal, Transfer, and use on the environment in the vicinity of the proposed withdrawal and in the vicinity of the proposed use; and
- 6.7.11.1.14 Any other information the applicant deems relevant to the District's criteria for approval of the proposed withdrawal, Transfer, and use.

6.7.11.2 An incomplete application shall be returned to the applicant for corrective action. If a properly completed application is not returned within sixty (60) days thereafter, the application shall be denied without prejudice.

6.7.11.3 Application Fees

6.7.11.3.1 Subject to Rule 6.7.2 and in accordance with *Neb. Rev. Stat.* § 46-691.03, an application for a permit for the withdrawal, transport, and use of Ground Water off the overlying land to augment water supplies in any Nebraska wetland or natural stream for the purpose of benefiting fish or wildlife or for producing other environmental or recreational benefits shall be accompanied by a non-refundable fee of fifty dollars (\$50) payable to the District.

6.7.11.3.2 Except for Rule 6.7.2, any Transfer application filed pursuant to Rule 6.7 shall be accompanied by a non-refundable fee of two-hundred dollars (\$200.00) payable to the District.

6.7.11.3.3 No other fees are imposed for the filing of an application, except as otherwise provided in these Rules and Regulations.

6.7.11.4 Public Comment on Applications - Prior to action taken on any application subject to *Neb. Rev. Stat.* § 46-691.03, the District shall provide an opportunity for the public to comment on such application at a regular or special meeting of the Board.

6.7.11.5 Additional Information Requested - Prior to taking action on any application for a permit governed by Rule 6.7, the District may request the applicant to provide additional information to support the application. Failure of the applicant to provide the requested information may be grounds for denying the permit.

6.7.11.6 Ownership and Encumbrances - The District shall not approve the Transfer of any Certified Water Uses or Certified Irrigated Acres or allow a Ground Water User or Landowner to participate in a financial or other incentive program established pursuant to subsection (8) of *Neb. Rev. Stat. § 46-739* unless the Person seeking such Transfer or participant in such program has submitted to the District a current report of title issued by an attorney or a registered abstractor, on a form provided by the District, stating: 1) the owner and legal description of the land from which the Certified Water Uses or Certified Irrigated Acres are to be transferred or which is the subject of such program; and 2) the existence of all liens evidenced by the filing of a mortgage, trust deed, or other equivalent consensual security interest, against the land from which the Certified Water Uses or Certified Irrigated Acres are to be transferred, or which is the subject of such program.

6.7.11.6.1 This subsection does not apply to a transfer of certified water uses or certified irrigated acres resulting from: A one-time transfer of four (4) acres or less; participation in a financial or other incentive program that involves the transfer, purchase, or retirement of four acres or less; or a transfer that involves one landowner on a single tract of land in which there is no reduction or increase in certified water uses or certified irrigated acres and the transfer involves an improvement in irrigation efficiency. Irrigation Efficiency is defined in the paper: Howell, Terry A. 2003. Irrigation Efficiency. Encyclopedia of Water Science. DOI:10.1081/E-EWS 120010252. Marcel Dekker, Inc., New York, NY.

6.7.11.7 Lienholder's Consent - For those lands that are the subject of a lien, an applicant shall provide a completed *Lienholder's Consent To Transfer Certified Irrigated Acres* form that is signed by the current lienholder.

6.7.11.8 Recording of the Transfer of Certified Water Uses or Certified Irrigated Acres - Pursuant to *Neb. Rev. Stat. § 46-739.02*, an instrument of Transfer of the right to use Ground Water shall be recorded by the District with the register of deeds in each county in which is situated the real estate, or any part thereof, from which a Transfer of Certified Water Uses or Certified Irrigated Acres occurred, and which a Transfer of Certified Water Uses or Certified Irrigated Acres has been approved by the Board.

6.7.11.8.1 The instrument of Transfer of the right to use Ground Water shall include a description of the real estate to and from which the Certified Water Uses or Certified Irrigated Acres were transferred, the number of Certified Irrigated Acres transferred, the nature of the Transfer, and the date on which the Transfer occurred.

6.7.11.8.2 The District may recover the cost of filing the instrument of Transfer from the Person seeking the Transfer.

6.7.11.8.3 The instrument of Transfer shall be executed, acknowledged, and recorded in the same manner as conveyances of real estate.

6.7.11.9 Approval of Transfers - Pursuant to *Neb. Rev. Stat. § 46-739(k)* the District shall deny or condition the approval of any such Transfer when and to the extent such action is necessary to:

6.7.11.9.1 Ensure the consistency of the Transfer with the purpose or purposes for which the District's Management Area was designated;

6.7.11.9.2 Prevent adverse effects on other Ground Water users or on surface water appropriators;

6.7.11.9.3 Prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement; and

6.7.11.9.4 Otherwise protect the public interest and prevent detriment to the public welfare.

6.7.11.10 District Considerations Relative to Public Interest and Public Welfare - When determining whether it would be in the public interest or detrimental to the public welfare to approve an application for a withdrawal and Transfer subject to Rules 6.7.2, 6.7.4, 6.7.5, 6.7.6, 6.7.7, 6.7.8.2, and 6.7.9.2, the District shall consider the following:

- 6.7.11.10.1 Whether the proposed use is a beneficial use of Ground Water;
- 6.7.11.10.2 The availability to the applicant of alternative sources of surface water or Ground Water for the proposed withdrawal, transport, and use;
- 6.7.11.10.3 Any adverse effect of the proposed withdrawal, Transfer, and use on Ground Water or surface water supplies needed to meet reasonable future demands for water within the state;
- 6.7.11.10.4 Any adverse environmental impacts;
- 6.7.11.10.5 The cumulative effects of the proposed withdrawal, Transfer and use relative to the matters listed in 6.7.11.10.1 to 6.7.11.10.4;
- 6.7.11.10.6 Whether the proposed withdrawal, Transfer, and use is consistent with any integrated management plan of the District;
- 6.7.11.10.7 If the Ground Water will be transferred to and used in any other Natural Resources District, whether that NRD has approved such Transfer and use and whether such Transfer and use would be consistent with the rules and regulations of such other NRD; and
- 6.7.11.10.8 Any other factors which the District deems relevant to protect the public interest and prevent detriment to the public welfare.

6.7.11.11 In making its decisions regarding transfer applications, the Board may consider relevant information, including, but not limited to:

- 6.7.11.11.1 Information obtained through using best available scientific information including, but not limited to, modeling efforts;
- 6.7.11.11.2 The trend of change in the depth of the water level in an aquifer over time, obtained from District records;
- 6.7.11.11.3 Other Transfers into the area in proximity to the impacted well;
- 6.7.11.11.4 The total usage in proximity to the impacted well; and
- 6.7.11.11.5 Other factors that would increase the rate of consumptive use in the area of the impacted well.

6.7.11.12 Conditions on Permits Issued - All permits issued by the District for Transfers subject to Rules 6.7.2, 6.7.4, 6.7.5, 6.7.6, 6.7.7, 6.7.8.2, and 6.7.9.2 shall be conditioned on:

- 6.7.11.12.1 The applicant's installation and maintenance of a Flow Meter on the well or wells that will be used for withdrawal;
- 6.7.11.12.2 The applicant's submission of an annual report concerning the total volume of water pumped from said well or wells in the preceding year;
- 6.7.11.12.3 Compliance with all applicable statutes and rules and regulations, including any statutes or rules and regulations adopted after the District's approval of the permit; and
- 6.7.11.12.4 The District shall otherwise condition the approval of any withdrawal and Transfer of Ground Water off the overlying land as is necessary to ensure that the withdrawal and Transfer is and continues to be consistent with the matters listed in Rule 6.7.11.9.

## 6.8 Pooling

6.8.1 Any Pooling Arrangement for Allocations and/or Certified Irrigated Acres may only be approved if the following conditions are met:

- 6.8.1.1 Any Pooling Arrangement within an Allocation Subarea shall not cross county boundaries (Allocation Subareas and county lines are shown on the attached maps in Appendix C);



6.8.1.2 No Pooling Arrangement shall be allowed between Allocation Subareas or across different Allocation Subareas;

6.8.1.3 Any Pooling Arrangement within an Allocation Subarea is limited to Pooling Arrangements within a Floating Township (Allocation Subareas and county lines are shown on the attached maps in Appendix C); and

6.8.1.4 All Pooling Arrangements shall be approved by the Board and are subject to conditions imposed by the Board.

6.8.2 Unless a Variance is approved, Pooling Arrangements of Certified Irrigated Acres which have an Allocation are prohibited during the first three (3) complete irrigation seasons following installation of a Flow Meter on any well included in such arrangement.

6.8.3 Before the Board may approve any Pooling Arrangement, at least fifty percent (50%) or more of the Allocation shall have been used during the previous Allocation Period.

6.8.4 An application for a Pooling Arrangement shall be in writing and contain the signatures of every Person having an interest in such arrangement.

6.8.5 An application for a Pooling Arrangement shall be submitted on or before February 28, and once approved will be effective for the remainder of the then current Allocation Period.

6.8.6 An application for a Pooling Arrangement shall be on forms provided by the District and include, the following:

6.8.6.1 Record from tax assessor showing owners for each Certified Irrigated Tract included in the Pooling Arrangement; and

6.8.6.2 One or more aerial photographs showing tracts to include the Pooling Arrangement.

6.8.7 Any Pooling Arrangement previously approved may be renewed by filing an application with the District for subsequent Allocation Periods. The Board may approve, deny or condition the renewal based on the criteria established in Rule 6.8.10.

6.8.8 If a Pooling Arrangement is terminated, the unused portion shall remain with each tract, unless all of the members of the Pooling Arrangement agree in writing to prorate the remaining Allocation among the members.

6.8.9 In no event may any Pooling Arrangement result in more Ground Water being withdrawn than a Ground Water User's Total Allocation.

6.8.10 The Board may condition its approval or deny any Pooling Arrangement to the extent necessary to: 1) ensure the consistency of the arrangement with the purpose or purposes for which the Management Area or subarea was designated; 2) prevent adverse effects on other Ground Water Users or on surface water appropriators; 3) interfere with the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement; and 4) otherwise protect the public interest and prevent detriment to the public welfare.

6.8.11 A Pooling Arrangement shall not be approved unless all Certified Irrigated Tracts have unused Allocations or Carryforward.

6.8.12 A newly purchased Certified Irrigated Tract may continue in an existing Pooling Arrangement provided all Persons in such Pooling Arrangement agree in writing.

6.8.13 Nothing contained in this Rule 6.8 is intended or shall be construed as 1) permitting the development of any new well, or 2) prohibiting a Person from pursuing a Variance, pursuant to Rule 8 of these rules and regulations.

## 6.9 Improper Irrigation Runoff

6.9.1 Pursuant to *Neb. Rev. Stat.* § 46-708(1), each Person who uses ground water irrigation in the state shall take action to control or prevent the runoff of water used in irrigation.

6.9.2 Definition: Improper Irrigation Runoff - shall mean surface runoff of water derived from ground water irrigation, which

6.9.2.1 Causes or contributes to the accumulation of such water upon or beneath the surface of the land of any other Person, which adversely affects such other Person's land, or

6.9.2.2 Contributes to the deterioration of water quality by depositing sediment and/or associated chemicals in natural drain ways, streams, or other bodies of water.

## 6.9.3 Prevention or Control Options

6.9.3.1 All Persons who use ground water irrigation shall prevent Improper Irrigation Runoff by utilizing a structural or non-structural procedure, measure, or combination thereof, which provides for the effective prevention, control or abatement of Improper Irrigation Runoff, including but not limited to:

6.9.3.1.1 Limitation of water utilized by the proper operation and management of irrigation system, including reuse or other control measures installed so that structural measures are not necessary to prevent Improper Irrigation Runoff;

6.9.3.1.2 Construction of a runoff collection and/or retention system such as a sump or dugout, together with a reuse pump and/or ditch to return the water to the same or other field for beneficial use;

6.9.3.1.3 Blocking of rows or field borders to contain irrigation water within the property which is under the direct supervision or control of such Person;

6.9.3.1.4 The execution and performance of an agreement between two or more Persons and approved by the District for the use of any irrigation runoff water; or

6.9.3.1.5 Any other procedure or measure approved by the District.

## 6.9.4 Irrigation Runoff - Use by other Persons

6.9.4.1 Persons whose irrigation runoff water is capable of being captured and utilized by another Person in a manner which will prevent waste of such water, deterioration of surface water quality, and accumulation of water upon the land of any other Person without his or her consent, may have such water excluded from the category of Improper Irrigation Runoff by submitting to the District an agreement providing for such capture and utilization signed by all affected parties, on forms provided by the District. When such agreement is approved by the District it will show the District's concurrence that the Person's irrigation runoff water is under adequate control.

The agreement may be terminated at any time by either party or by the District whenever it is determined that such agreement no longer prevents or controls Improper Irrigation Runoff. If the District terminates the agreement, written notice shall be provided to all parties. If one of the parties to the agreement causes the termination, written notice shall be provided to all other parties and to the District.

### 6.9.5 Complaints

6.9.5.1 Any Person who owns or leases land within the boundaries of the District or the Board on its own motion may file a written complaint against any Person using ground water irrigation, alleging Improper Irrigation Runoff.

6.9.5.2 Complaints shall be filed at the office of the District on forms provided by the District.

6.9.5.3 The General Provisions and Procedures for Enforcement set forth in Section 5 of these Rules and Regulations shall be followed for the processing and enforcement of Improper Irrigation Runoff Complaints and violation of Section 6.9.

## 7. GROUND WATER QUALITY CONTROLS

7.1 Controls in Ground Water Quality Management Subareas - The following controls shall apply to all irrigated land within the specified Quality Management Subarea and to Operators of specific crops, as follows.

### 7.1.1 Sidney Ground Water Quality Management Subarea

7.1.1.1 This Quality Management Subarea (Appendix D) shall be designated in Phase III and shall apply to all irrigated crop acres except alfalfa.

### 7.1.2 Cheyenne County East Lodgepole Valley Ground Water Quality Management Subarea

7.1.2.1 This Quality Management Subarea (Appendix D) shall be designated in Phase I.

### 7.1.3 Deuel County Lodgepole Valley Ground Water Quality Management Subarea

7.1.3.1 This Quality Management Subarea (Appendix D) shall be designated in Phase I.

### 7.1.4 South Platte Valley Ground Water Quality Management Subarea

7.1.4.1 This Quality Management Subarea (Appendix D) shall remain designated in Phase I until the 2024 crop season when this subarea will transition into a Phase II designation and shall apply to all irrigated crop acres except alfalfa.

7.2 Phase I Controls: Established when the average nitrate-nitrogen levels of all sampled wells exceed 65% of the MCL for three (3) consecutive years.

7.2.1 Training Certification: Education in Irrigation and Nitrogen Management - Any Operator of irrigated land within a Quality Management Subarea shall obtain training and education certification from the District.

7.2.1.1 The required training and education shall be accomplished through participation in an approved training and education program held by the District. Each Operator shall obtain certification every five (5) years, beginning after the 2020 scheduled training and education program. Certification requires the successful completion of the program.

7.3 Phase II Controls: Established when the average nitrate-nitrogen levels of all sampled wells exceed 80% of the MCL for three (3) consecutive years.

7.3.1 In a Phase II Quality Management Subarea, all requirements in Phase I will be met.

7.3.2 Soil composite samples will be required annually on Phase II fields to determine residual nitrogen. Laboratory analysis of Manure or Biosolids is required. All required soil composite samples are the Operator's or owner's responsibility and expense.

7.3.2.1 Sampling and analysis shall be performed before planting each crop.

7.3.2.2 A composite sample is required from each field at two (2) different depths as follows: 0-10 inches to determine soil fertility needs including nitrate-nitrogen levels; and 10-36 inches to account for the balance of nitrate-nitrogen.

7.3.2.3 A composite sample will be collected on each tract of land sixty (60) acres or less. Each composite sample will consist of a minimum of eight (8) probes taken at each of the depths provided for in Rule 7.3.2.2.

7.3.2.4 The composite soil samples will be sent to a laboratory approved by the District. An annual list of approved laboratories will be made available and kept on file at the District.

7.3.2.5 The recommended nitrogen application rate will be determined by the nitrogen accounting method in the District's Annual Nitrogen Management Reporting (Annual Reporting) form.

7.3.3 All Phase II fields that are irrigated with Ground Water will be required to have a water sample collected and analyzed annually from the supplying well(s) for nitrate-nitrogen levels. All required water samples are the Operator's or owner's responsibility and expense.

7.3.3.1 Water samples will be collected and analyzed from each well providing water to the Irrigated Acres during the irrigation season of the prior crop year.

7.3.3.2 Water samples shall be sent to testing laboratories approved by the District. The District shall compile a list of approved laboratories, which will be available at the District office.

7.3.4 Sampling is required for field application of Manure and/or Biosolids for fertilizer purposes. The District's Annual Reporting form will be used by owners or Operators to estimate the nitrogen credit given to Manure and Biosolids. The owner or Operator is responsible for taking and paying for the sampling.

7.3.4.1 Rate (tons Manure/Biosolids/acre) of Manure/Biosolids to be applied and nitrogen content should be considered in advance and shall not exceed the total nitrogen need of the crop.

7.3.5 The filing of Annual Reports is required by Operators/owners of Phase II/Phase III fields. The report form will serve as a worksheet for the Operator to determine how much nitrogen will be needed for the following crop year.

7.3.5.1 The Annual Reports will be filled out on forms provided by the District and shall contain the following information.

7.3.5.1.1 Water testing results for each irrigation well.

7.3.5.1.2 Soil testing results on sixty (60) acres or less in Phase II designated subareas, and/or on forty (40) acres or less in Phase III designated subareas.

7.3.5.1.3 Manure/Biosolids application rates and analysis for nitrogen.

7.3.5.1.4 Crops to be grown and the realistic yield goal.

7.3.5.1.5 Total nitrogen needed for yield goal.

7.3.5.1.6 Amount of nitrogen available from water to be used.

7.3.5.1.7 Residual nitrogen available in three (3) feet of soil.

- 7.3.5.1.8 Fifty percent (50%) of the pounds of nitrogen per acre available from Manure/Biosolids, if applicable.
- 7.3.5.1.9 Nitrogen available from past crop.
- 7.3.5.1.10 Recommended use of commercial fertilizer to achieve realistic yield goal.
- 7.3.5.1.11 Actual commercial fertilizer (nitrogen) applied.
- 7.3.5.1.12 Actual yield achieved.
- 7.3.5.1.13 Signature of Operator is required.

7.3.5.2 Annual Reports shall be submitted to the District twice each year. The top white sheet of the report(s) along with applicable water, soil, Manure, and/or Biosolids analyses shall be filed with the District on or before April 25<sup>th</sup> of each year, with the top portion (Fertilizer Data Information) of the report completed. The yellow copy for Phase II fields shall be completed and filed with the District on or before December 31<sup>st</sup> of each year indicating nitrogen amounts applied and actual yield. The yellow copy for Phase III fields shall be completed and filed with the District on or before December 31<sup>st</sup> of each year indicating method of split application and pounds of nitrogen applied per acre per application. The use of a nitrification inhibitor, if used, shall be verified on the Annual Reporting form. The producer retains the pink copy for his or her files.

7.4 Phase III Controls: Established when nitrate-nitrogen levels exceed 95% of the MCL for three (3) consecutive years.

7.4.1 In a Phase III Quality Management Subarea, all requirements in Phase I and Phase II, except for Rule 7.3.2.3 will be met.

7.4.2 Soil Composite samples will be required on any tract of land forty (40) acres or less. Each composite sample will consist of a minimum of eight (8) probes taken at each of the depths provided for in Rule 7.3.2.2.

7.4.3 Application of commercial fertilizer is prohibited on all soils between October 1 and February 28.

7.4.4 Spring applications of commercial fertilizer will either be split by preplant and side dress applications or split applications through a pivot chemigation system.

7.4.5 If a split application method is not used, a nitrification inhibitor must be applied at the manufacturer's recommended rate.

7.4.5.1 A receipt as proof of purchase for the nitrification inhibitor must accompany the producers' Phase III Annual Reports.

7.4.6 The District will continue to encourage, promote and incentivize the advancement of irrigation technologies and Best Management Practices.

#### 7.5 Identifying and Establishing Ground Water Quality Management Subareas

7.5.1 The District will establish a Ground Water Quality Management Subarea when contamination is detected at or about the phase level requirements specified in a quality management subarea.

7.5.2 Action will be triggered when the average contamination levels of monitoring data in three (3) consecutive years over a phase level are reached in an area no less than sixteen (16) square miles. Four (4) or more monitoring wells will be sampled in any phase Quality Management Subarea before a determination is made.

7.5.3 Phase Quality Management Subareas will be established along section line boundaries. Sections adjacent to existing Ground Water Management Quality Subareas will be added to those Quality Management Subareas if it is determined that their average levels of contamination meet any of the triggering criteria for Quality Management Subareas.

7.5.4 When a management phase is triggered, final boundary determinations will be based on levels of contamination monitored, configuration of the aquifer, soils, depth to water, geologic characteristics, and direction of Ground Water flow or intensity of water use development.

## 7.6 Implementation Time Frame for Establishing a Ground Water Quality Management Subarea

7.6.1 Studies shall be conducted to determine the source, extent, mechanisms and effects of pollution and to identify the extent of the boundary.

7.6.2 The District will not declare a Phase I Quality Management Subarea until the average contamination levels in a Ground Water Quality Management Subarea are above the Phase I trigger for three consecutive years. The three-year time interval will allow the District to systematically evaluate the problem in any Quality Management Subarea.

7.6.3 Once the average contamination levels monitored are higher than a trigger for three (3) consecutive years, the District's monitoring activities will escalate into an Assessment Program. Monitoring requirements for an Assessment Program will be more detailed than those involved in a Detection Program. The three-year time interval will allow the District to plan for an orderly administration, to execute provisions of the Nebraska Ground Water Management and Protection Act, and to promote public awareness and input regarding Ground Water quality concerns.

## 7.7 Transition Period between Management Phase Levels and Termination Process

7.7.1 The District may increase the Phase Level in any subarea to a higher phase, if a phase level trigger has been reached for three (3) consecutive years.

7.7.1.1 The Board of Directors, in its sole discretion, may decide to elevate a Quality Management Subarea to a higher phase in a lesser period of time if it finds that water quality is being adversely affected.

7.7.2 The transition period between phase levels begins with a finding that the average in three (3) consecutive years in a Quality Management Subarea is above/below Phase II and/or III level triggers.

7.7.3 If the results of the District's monitoring program for a Ground Water Quality Management Subarea indicate at any time that the average contaminant levels for three (3) consecutive years have declined to below a Quality Management Subarea's phase level trigger then the Quality Management Subarea and its controls may be lowered to the next lower phase.

7.7.3.1 The Board, in its sole discretion, may determine to maintain a Quality Management Subarea in the same phase for a longer period of time if it finds that a lower phase will jeopardize water quality in the subarea.

7.7.4 A Ground Water Quality Management Subarea designation may be removed by the Board if it is determined that the Ground Water contamination problem in the Quality Management

Subarea has been reduced to a level below 65% MCL. In addition, the Board, in its sole discretion, may determine to maintain the Quality Management Subarea designation, but to remove the Training Certification requirement. Ground Water Advisory Committees will be consulted before any such action is taken.

## 7.8 Wellhead Protection

7.8.1 Wellhead Protection boundaries have been delineated for all municipal wells located in the District. Any Municipality or Non-Community Water System may request the District to designate a Ground Water Quality Management Subarea, which coincides with a Wellhead Protection boundary.

7.8.1.1 A subarea may be designated when requested by a Municipality or Non-Community Water System if the following criteria are met.

7.8.1.1.1 The Municipality or Non-Community Water System has adopted a Wellhead Protection Area Plan and such plan has been approved by the Nebraska Department of Environment and Energy as required by the Nebraska Wellhead Protection Act, or

7.8.1.1.1.1 Any existing subarea boundary may be expanded by the District to coincide with a Wellhead Protection area boundary; however, the existing subarea boundary may not be decreased or reduced.

7.8.1.2 If the cumulative average nitrate level in the wells of a water system of a Municipality or Non-Community Water System exceeds 65% of the MCL for three (3) consecutive years, such Municipality or Non-Community Water System will actively seek an approved Wellhead Protection Plan.

7.8.1.3 If nitrate levels have increased to such an extent that water quality triggers in the wellhead subarea are required to increase to the higher Phase of control.

7.8.2 Within ninety (90) calendar days after receipt of such a request, the District shall appoint an advisory committee consisting of an equal number of representatives from the Municipality and Operators/owners in the proposed subarea and at least one (1) representative from the District. The advisory committee will conduct its first meeting within one hundred and eighty (180) calendar days after receipt of such request.

7.8.3 Within one (1) year following the creation of the subarea, the advisory committee shall submit a report to the District recommending whether a subarea should be designated. If the report recommends such designation, it must also include recommendations on the management activities to be implemented from the District's Ground Water Quality Management Subarea controls. The committee may also make recommendations to the Municipality or Non-Community Water System concerning modifications to their Wellhead Protection Area Plan.

7.8.4 The District shall hold a public hearing concerning the designation of a subarea which will conform to the boundaries of the Municipality's or Non-Community Water System's approved Wellhead Protection boundary. Following the hearing, the District may accept or reject the designation of a subarea.

7.8.5 The various levels of control in a Municipality or Non-Community Water System's requested subarea will be based on the District's Districtwide Ground Water Management Area Rules and Regulations.

7.8.6 Any discontinuance of or modification to a designated subarea of a Municipality or Non-Community Water System will be subject to review every three (3) years or at the request of the advisory committee.

## 7.9 Chemigation

### 7.9.1 Chemigation Permit

7.9.1.1 No Person shall apply or authorize the application of Chemicals to land or crops through the use of Chemigation unless such Person obtains a Permit from the District. No Permit however, is required to pump or divert water to or through an Open Discharge System.

7.9.1.1.1 Any Person who intends to engage in Chemigation shall, before commencing, file with the District an application for a Permit for each Injection Location, on forms provided by the District.

7.9.1.1.2 A Permit must be obtained for each Injection Location on an annual basis. Every Permit shall expire on June 1 of each year, and each Chemigation Permitholder is responsible for renewal if Chemigation will be used for that year.

7.9.1.2 A Permit applicant shall notify the District within ten days of any changes in the information provided on the Permit application.

7.9.1.2.1 Except as otherwise provided in Rule 7.9, consequences for failure to report will be guided by the provisions set forth in Rule 5 of these rules and regulations.

7.9.1.3 A complete application along with the required fee for a Permit shall be considered received by the District on the date it is either hand delivered or received by mail.

7.9.1.3.1 The District will return incomplete and unsigned applications to the Chemigation Permitholder for corrective action. Any application fee received with an incomplete application will also be returned.

7.9.1.3.2 If an application fee is unpaid or is not accompanied by the appropriate application fee, the District will hold the application and notify the Chemigation Permitholder of the fee required.

7.9.1.3.3 Any application held by the District for more than 30 calendar days, for which no fee is paid, may be returned to the Chemigation Permitholder.

### 7.9.2 Certification

7.9.2.1 All Chemigation Applicators must undergo training and maintain certification as required by the Rules of NDEE, Title 195 NAC, Ch. 13. Training programs will be offered through the Nebraska Extension. The Director shall issue a certificate acknowledging the competency of the applicant, determined by passing a written examination approved by the NDEE. Each Applicator's certificate shall be valid for a period of four years, and shall expire on January 1 of the fourth year after the date of issuance.

7.9.2.1.1 The District shall not be responsible for notifying Chemigation Applicators of their certification expirations. Current certification is the sole responsibility of the Applicator.

7.9.2.1.2 The District may assist in announcing the date, time and location of training programs scheduled by the Nebraska Extension.

### 7.9.3 New Permit Process

7.9.3.1 Except for an emergency Permit, the District shall review each completed Permit application, conduct an inspection, and approve or deny the application within 45 calendar days after the completed application is received by the District.

7.9.3.1.1 An application shall be approved, and a Permit issued by the District if the Irrigation Distribution System complies with the equipment requirements of *Neb. Rev. Stat. § 47-1127* and the Applicator has been certified as a Chemigation Applicator under the requirements of *Neb. Rev. Stat. §§46-1128 and 46-1129*.



7.9.3.1.2 A copy of each approved application or the information contained in the application shall be maintained by the District and provided to NDEE upon request. This subsection shall not be construed to prevent the use of portable Chemigation equipment if such equipment meets the requirements of *Neb. Rev. Stat.* § 46-1127.

7.9.3.2 A Permit, except a special Permit, shall not be issued or renewed by the District, if any of the following conditions are present:

7.9.3.2.1 The applicant has failed to provide the required information in the application, as specified in Title 195, NAC, Ch. 2, § 002 of rules of the NDEE;

7.9.3.2.2 The Irrigation Distribution System does not comply with the equipment standards set forth in Title 195, NAC, Ch. 9 and 10 of NDEE;

7.9.3.2.3 The Applicator has not been certified as a Chemigation Applicator by the NDEE ; or

7.9.3.2.4 Failure of the applicant to remit the appropriate fee.

#### 7.9.4 Renewal Permit Process

7.9.4.1 All Permits shall expire on June 1 and must be renewed annually. A Permit may be renewed each year upon payment of the required fee and completion of a form provided by the District. The Chemigation Permitholder shall list the names of all Chemicals used the previous year. Once a Permit has expired, it shall not be reinstated without meeting all of the requirements for a new permit.

7.9.4.1.1 Renewal Permits are subject to inspection by the District.

7.9.4.2 Each Chemigation Permitholder is responsible for the yearly renewal of a Permit. The District may attempt to notify the Chemigation Permitholder by either mail or posting notice on its website reminding the Chemigation Permitholder of his or her obligation to renew such Permit. However, if the District elects to attempt such notification, such election is not intended to nor does it create a legal obligation to so notify.

#### 7.9.5 Special Permit Process

7.9.5.1 If the District determines after inspection that an Irrigation Distribution System does not need all of the safety equipment prescribed by the Chemigation Act, the District shall forward a recommendation to the NDEE for review. If NDEE agrees with the District, NDEE shall grant approval to the District to issue a special Permit.

7.9.5.2 Issuance of a special Permit shall not relieve the Permitholder or Applicator from compliance with all other responsibilities under the Chemigation Act or Title 195 NAC, Ch. 13 of the NDEE .

#### 7.9.6 Emergency Permit Process

7.9.6.1 A Person may file an application for an emergency Permit on forms provided by the District. The District shall review each emergency application and approve or deny it within two Working Days after a complete application is filed. An emergency application shall be approved and a Permit issued by the District if the Irrigation Distribution System complies with the equipment requirements of *Neb. Rev. Stat.* § 46-1127 and the Applicator has been certified under *Neb. Rev. Stat.* §§ 46-1128 and 46-1129. If the District has not denied an emergency Permit within two Working Days, it shall be deemed approved.

7.9.6.2 No emergency Permit shall be issued by the District if any of the following conditions exist:

- 7.9.6.2.1 The applicant has failed to provide the required information, as specified in Title 195, NAC, Ch. 2, § 002 of the NDEE, on the application form;
- 7.9.6.2.2 The Irrigation Distribution System does not comply with the equipment standards set forth in Title 195, NAC, Ch. 9 and 10 of the NDEE;
- 7.9.6.2.3 The Applicator has not been certified as a Chemigation Applicator by the NDEE; or
- 7.9.6.2.4 Failure of the applicant to remit the appropriate fee.

7.9.6.3 Any Chemigation Permitholder or Applicator applying Chemicals pursuant to an emergency Permit who violates any of the provisions of Rule 7.9 shall have such Permit automatically revoked by the District without a hearing and shall be guilty of a Class II misdemeanor, as provided in *Neb. Rev. Stat.* § 46-1119(3).

#### 7.9.7 Permit Denial, Suspension, Revocation

7.9.7.1 The District shall deny, refuse renewal of, suspend or revoke any Permit on any of the following grounds:

- 7.9.7.1.1 Fraud or deceit was used in obtaining a Permit;
- 7.9.7.1.2 Failure to notify the District of equipment replacement or alteration within seventy-two (72) hours;
- 7.9.7.1.3 Failure of Applicant or Chemigation Permitholder to notify the District and NDEE of actual or suspected spill or accident within 24 hours;
- 7.9.7.1.4 Failure of the Chemigation Permitholder to carry out clean up measures prescribed by the NDEE with the time specified; or
- 7.9.7.1.5 Violation of any of the provisions of the Chemigation Act or any standards or rules and regulations adopted and promulgated pursuant to such act.

7.9.7.2 Before the District denies, refuses to renew, suspends, or revokes a Permit, it shall send the applicant or Chemigation Permitholder a notice setting forth the specific reasons for the proposed action.

- 7.9.7.2.1 The denial, refusal to renew, suspension, or revocation shall become final ten (10) calendar days after mailing of notice unless such person, within such ten-day period, gives the District a written request for a hearing.
- 7.9.7.2.2 If such request is made, the applicant or Chemigation Permitholder shall be given the opportunity for a hearing before the board of directors of the District and shall have the right to present evidence on his or her own behalf.
- 7.9.7.2.3 On the basis of the evidence presented, the proposed action shall be affirmed or set aside.
- 7.9.7.2.4 A copy of such decision setting forth the findings of fact and the specific reasons upon which it is based shall be sent to the applicant or Chemigation Permitholder.

7.9.7.3 If the District concludes that there is an actual or imminent threat of danger to the public or environment as a result of operation of a Chemigation system, the District shall immediately order suspension of the operation of the Chemigation system.

- 7.9.7.3.1 Any aggrieved person may, within ten (10) calendar days of an order of suspension pursuant to this Rule 7.9.7.3, request a hearing on such order.
- 7.9.7.3.2 The hearing shall be held within the ten (10) day period.
- 7.9.7.3.3 The District shall give written notice of the hearing by certified or registered mail or by personal service to the Chemigation Permitholder, Applicator, or Person responsible for the operation of the Chemigation system.
- 7.9.7.3.4 The District shall issue an order addressing the matters raised at the hearing within ten (10) calendar days after the hearing.

7.9.7.4 If the District concludes that the suspension should be continued, the District may, if necessary, apply for a restraining order or temporary or permanent injunction against the Chemigation Permitholder, Applicator, or Person responsible for the operation of the Chemigation system pursuant to the procedure prescribed by *Neb. Rev. Stat. § 46-1138(2)*.

#### 7.9.8 Chemigation Permit Fee Schedule

7.9.8.1 To aid in defraying the cost of administration of the Chemigation Act, the District shall collect the following fees all as authorized pursuant to *Neb. Rev. Stat. § 46-1121*. No Permit shall be approved by the District without the payment of the required Permit fee.

7.9.8.1.1 A new Permit application fee of \$60 (not to exceed \$150) for each new Permit of which \$5.00 shall be paid by the District to the NDEE.

7.9.8.1.2 An annual renewal Permit application fee of \$25 (not to exceed \$100) of which \$2.00 shall be paid by the District to the NDEE.

7.9.8.1.3 A special Permit application fee of \$100 (not to exceed \$150) of which \$5.00 shall be paid by the District to the NDEE.

7.9.8.1.4 An emergency Permit application fee of \$250 (not to exceed \$500) of which \$10.00 shall be paid by the District to the NDEE.

#### 7.9.9 Inspections

7.9.9.1 The District shall conduct area wide, selective, and periodic inspections to ensure compliance with the Chemigation Act and rules and regulations adopted and promulgated under the act.

7.9.9.2 A Chemigation Permitholder or any Person believed by the District to be chemigating without the required Permit shall be notified by the District of the District's right and intent to inspect the premises concerned.

7.9.9.3 Authorized representatives of the District and NDEE shall have access at all reasonable times to inspect a Chemigation system and to otherwise carry out their duties under the Chemigation Act; specifically, *Neb. Rev. Stat. § 46-1124*.

7.9.9.4 Prior to inspection, such authorized representatives shall make reasonable efforts to obtain consent to inspect from the Chemigation Permitholder, his or her authorized employee, the Applicator, or the Landowner or Operator of the system.

7.9.9.5 If consent for inspection is denied, such authorized representative may apply to the district or county court of the county in which the Chemigation system is located for an inspection warrant to require the Chemigation Permitholder or Person believed to be chemigating without a required Permit to allow the authorized representatives to enter onto his or her land to carry out their duties under the Chemigation Act or these rules and regulations.

7.9.9.6 No Person shall refuse entry or access to any authorized representative of the District or NDEE who requests entry for purposes of inspection and who presents appropriate credentials and an inspection warrant, and no Person shall obstruct, hamper, or interfere with any such inspection.

7.9.9.7 Nothing in this subsection 7.9.9 shall be construed to prevent prompt inspection without consent or appropriate warrant in emergency situations when there is neither sufficient time nor opportunity to obtain an inspection warrant. If requested, the Permitholder, Applicator, or Person chemigating without a required Permit shall receive a report specifying all facts found which relate to compliant status.

7.9.9.8 Entry upon any property pursuant to the Chemigation Act shall not be considered to be trespass, and no damage shall be recoverable on that account alone. Damage to crops caused by the issuance of any order authorized by the Chemigation Act shall not be recoverable on that account alone, as provided in *Neb. Rev. Stat. § 46-1124(3)*.

7.9.9.9 The Chemigation Permitholder or Applicator shall be present, if possible, during the inspection.

7.9.9.10 The Chemigation Permitholder or Applicator will be required to operate the system to enable the authorized representative to examine whether the Irrigation Distribution System complies with the equipment requirements.

7.9.9.11 The authorized representative shall describe any factor on the inspection form, which could have a bearing upon future recall of a particular inspection.

7.9.9.12 When a Chemigation Permitholder or Applicator has Chemigation sites in more than one Natural Resources District, it may be convenient for the District to allow an inspector from an adjacent District to inspect systems in the South Platte Natural Resources District.

7.9.9.12.1 In such cases the District will accept the findings of the inspector of an adjacent District, provided a reciprocity agreement has been made with that District.

#### 7.9.10 Equipment

7.9.10.1 Irrigation Distribution Systems with Chemigation capabilities shall be equipped with the following devices.

7.9.10.1.1 Mainline check valve

7.9.10.1.2 Vacuum relief valve

7.9.10.1.3 Inspection port

7.9.10.1.4 Low pressure drain valve with attached 20 foot hose

7.9.10.1.5 Chemical injection line check valve

7.9.10.1.6 Simultaneous interlock device

7.9.10.2 Design configuration of all equipment shall be in compliance with the Title 195 NAC, Ch, 9 and 10 of the NDEE and any rules and regulations promulgated by the District.

7.9.10.3 All Chemigation Permitholders shall maintain the above listed equipment in good working condition at all times during Chemigation.

7.9.10.4 Replacement or Alteration of Equipment

7.9.10.4.1 Any Chemigation Permitholder who replaces or alters or authorizes the replacement or alteration of Chemigation equipment which was previously approved by the District shall notify the District within seventy-two hours of replacement or alteration. The District shall conduct an inspection of replaced or altered equipment and shall approve the continuation of Chemigation if the replaced or altered equipment remains in compliance with the requirements of *Neb. Rev. Stat. § 46-1127*. No additional Permit fee shall be collected by the District for inspecting previously approved Injection Locations.

#### 7.9.11 Posting

7.9.11.1 All Chemigation Permitholders shall post signs on chemigated fields when using any herbicide or Pesticide, or a Chemical for which the label requires posting. A sign with the words, "KEEP OUT. CHEMICAL APPLICATION THROUGH IRRIGATION SYSTEMS" shall be posted by the Chemigation Permitholder at each point of entry into the treated area, adjoining farmstead, or residential area, along any public road where public exposure may occur, and at the

point of Chemical injection if such point is outside the treated area. The lettering on the sign shall be a color that contrasts with the background and the letters shall be two and one-half inches in height. The signs shall conform to the Districts rules and regulations as well as Title 195 NAC, Ch. 12, § 002.04 of the NDEE.

#### 7.9.12 Enforcement

7.9.12.1 Except as otherwise provided in Rule 7.9, Rule 5 establishing the General Provisions and Procedure for Enforcement shall apply to Chemigation.

#### 7.9.13 Reporting

7.9.13.1 An Applicator or Chemigation Permitholder shall notify the District and the NDEE of any actual or suspected accident resulting from the use of Chemigation within twenty-four hours of its discovery. Failure to do so may result in a civil penalty of not more than five hundred dollars (\$500) or a guilty verdict of a Class III misdemeanor. Each day of continued violation shall constitute a separate offense.

7.9.13.2 Notification of any actual or suspected accident shall be made pursuant to Title 195 NAC, Ch. 14, § 002.

### **8. VARIANCES**

8.1 Unless otherwise provided by law or these rules and regulations, the Board may grant a Variance from these rules and regulations. If the Variance requested involves the Consumptive Use of water that would otherwise be prohibited by these rules and regulations, the Board is required to find Good Cause Shown. The District's Variance procedures do not apply to the Chemigation Act.

#### 8.2 Expedited Variances

8.2.1 If a Landowner desires to Transfer any Certified Irrigated Acres or Certified Irrigated Tract to other land owned by said Landowner, which is located within the same and/or adjacent section(s) and within the same county boundary and subarea division, such Transfer will not be approved unless said Landowner applies for and is granted an expedited variance from the District. The Board authorizes the staff to make the determination whether to approve, approve with conditions, or deny the expedited variance. The expedited Variance request shall not result in an increase in Certified Irrigated Acres, unless said Landowner provides an Offset. If an Offset is required, the expedited variance request shall be processed through the Variance Advisory Group.

8.2.1.1 Except as otherwise provided in 8.2.1 above, if at any time during the review process, the staff determines that it is necessary for the Board, with the assistance of the Variance Advisory Group, to make the final decision on whether to approve, approve with conditions, or deny the expedited variance application, staff will present their recommendation regarding the application to the Advisory Group and the Board, with the final decision being made by the Board.

8.2.2 If the ownership or Operator of any Certified Irrigated Acres or Certified Irrigated Tract changes, the Board authorizes the staff to modify the certification record for such acres/tracts to reflect the change. The current Landowner shall notify the District within

thirty (30) days of a change in ownership and/or the Operator of any Certified Irrigated Acres or Certified Irrigated Tract.

8.2.3 If a Certified Irrigated Tract owned by the same Landowner crosses county lines but not subarea boundaries, the Board authorizes the staff to approve a Pooling Arrangement for such tract.

8.2.4 The Board authorizes the staff to evaluate and consider approval of renewed Pooling Arrangement requests when a Water Well of one (1) Landowner irrigates his/her Certified Irrigated Acres and the Certified Irrigated Acres of another adjacent Landowner.

### 8.3 Variance Request Application Fee

8.3.1 Pursuant to *Neb. Rev. Stat. § 46-707(3)*, any Variance request application filed with the District shall be accompanied by a non-refundable fee of three hundred fifty dollars (\$350) payable to the District.

## APPENDIX A

### Districtwide Ground Water Management Area Designation and Delineation

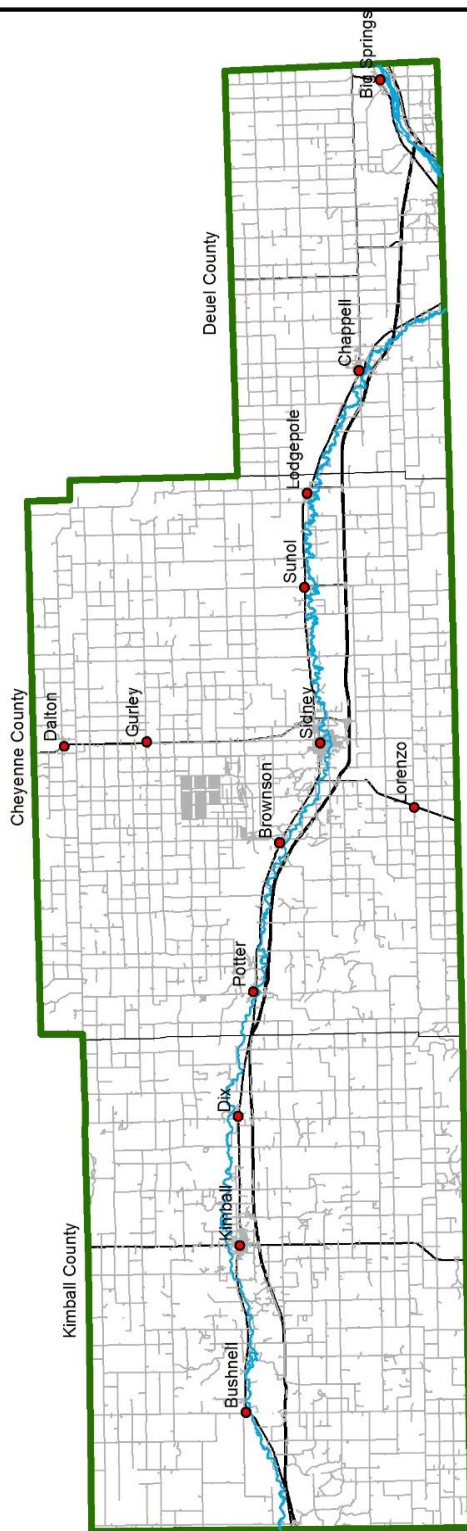
The South Platte Natural Resources District designates its Districtwide Ground Water Management Area to include all lands within the boundaries of the South Platte NRD as shown on the map attached as Appendix B. This area includes all lands within the counties of Kimball, Cheyenne, and Deuel.

### Stratigraphic Extent

The Ground Water Management Area includes all geologic strata within the boundaries of the District, beginning with the sediments from ground surface downward through all aquifer units supplying Ground Water for beneficial purposes. This includes Quaternary and Tertiary deposits as defined by the CSD-UNL.

# South Platte Natural Resources District

## Districtwide Ground Water Management Area



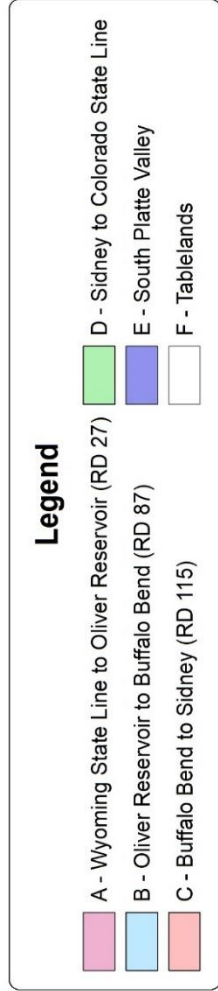
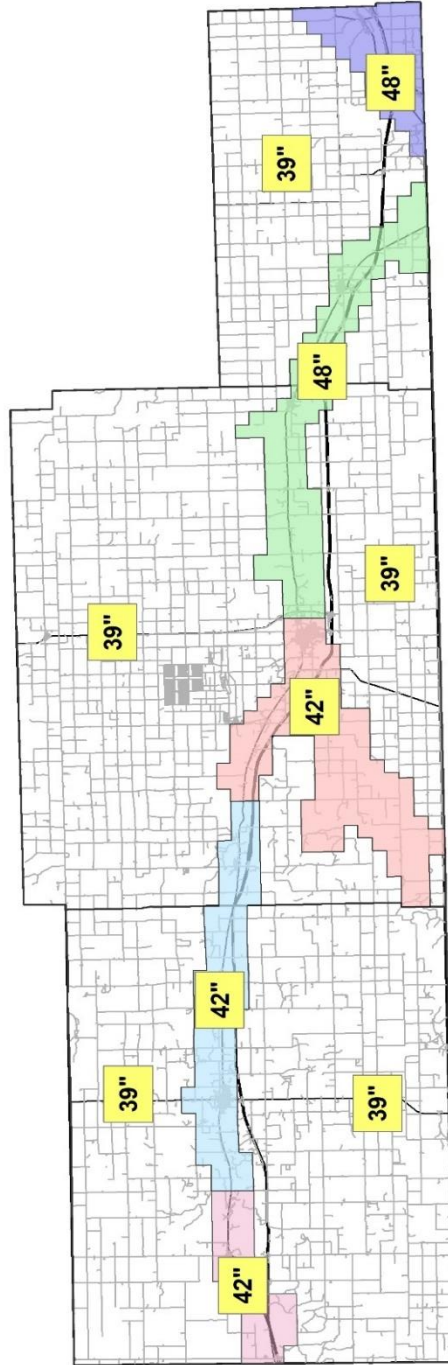
**Legend**

- Districtwide Ground Water Management Area



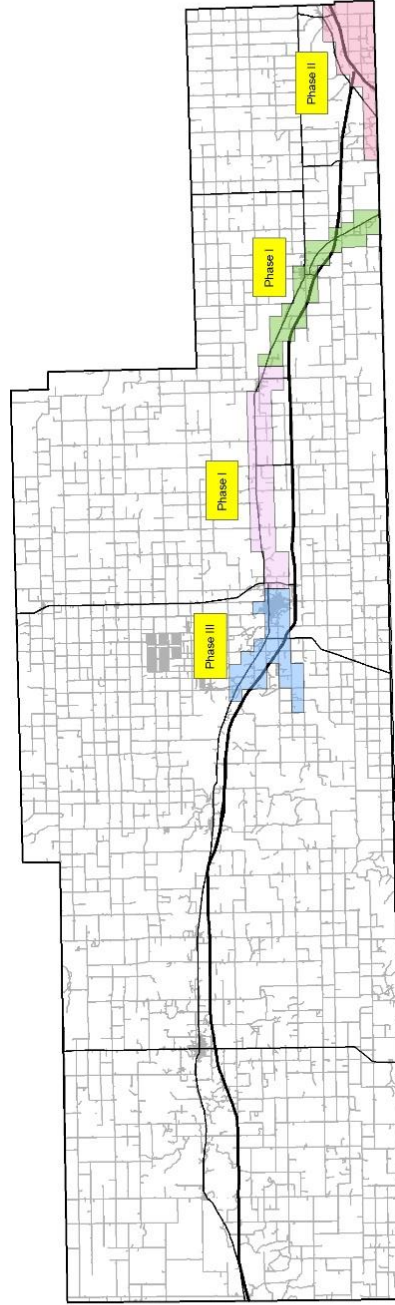
# South Platte Natural Resources District

Allocation Subareas & Allocations (Acre-inches) for the  
2022 through 2024 Allocation Period



# South Platte Natural Resources District

## Ground Water Quality Management Subareas



1/20/2023